



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

██████████
Docket No. 4837-22
Ref: Signature Date

██████████
██████████
████████████████████

Dear ██████████:

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Although you did not file your application in a timely manner, the statute of limitations was waived in accordance with the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo). A three-member panel of the Board, sitting in executive session, considered your application on 2 November 2022. The names and votes of the panel members will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application together with all material submitted in support thereof, relevant portions of your naval record, and applicable statutes, regulations, and policies, to include the Kurta Memo, the 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD)/mental health condition (MHC) (Hagel Memo), and the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo). The Board also considered an advisory opinion (AO) from a qualified mental health professional dated 15 September 2022, which was previously provided to you. Although you were provided an opportunity to respond to the AO, you chose not to do so.

You entered active duty with the Marine Corps on 26 February 1974. On 18 March 1974 and 19 March 1974, you received two separate non-judicial punishments (NJP) for nine hours and 15 minutes of unauthorized absence (UA), disrespectful in language toward a non-commissioned officer (NCO) and disobeying a lawful order. On 10 April 1974, a Medical Evaluation Board (MEB) diagnosed you with Dermatitis, Atopic that existed prior to enlistment (EPTE). As a result, you were notified of pending administrative separation action by reason of convenience of the government (COG) due to failure to meet physical standards/erroneous enlistment. After waiving your rights, your commanding officer (CO) forwarded your package to the separation authority

(SA) recommending your discharge by reason of COG due to failure to meet physical standards/erroneous enlistment with a General (Under Honorable Conditions) characterization of service. The SA approved the recommendation and, on 15 April 1974, you were so discharged.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, your desire to upgrade your discharge and contentions that you incurred PTSD and other mental health conditions during military service and you are currently in hospice care. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 15 September 2022. The AO stated in pertinent part:

There is no evidence that Petitioner was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The AO concluded, "it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence the circumstances of his separation could be attributed to a mental health condition."

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct as evidenced by your two NJPs, outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the negative impact it had on the good order and discipline of your command. The Board also took into consideration that you only served one month and 20 days on active duty but incurred two NJPs during this brief period of active duty service. Additionally, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to PTSD or another mental health condition. Finally, while the Board took into consideration your contentions, the Board noted that there is no evidence in your record, and you submitted none, to substantiate your contentions. As a result, the Board determined significant negative aspects of your service outweighed the positive aspects and continues to warrant a General (Under Honorable Conditions) characterization. Even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting an upgraded characterization of service as a matter of clemency or equity. Accordingly, given the totality of the circumstances, the Board determined your request does not merit relief.

