



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

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Docket No: 5158-22

Ref: Signature Date

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Dear Petitioner:

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 19 December 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 service 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. Although you were provided the opportunity to respond to the AO, you chose not to do so.

You previously requested relief through the Navy Discharge Review Board and were denied relief on 3 November 1977.

You enlisted in the United States Marine Corps and commenced a period of service on 15 August 1973. On your enlistment application, you disclosed pre-service arrests for disorderly conduct and auto theft.

On 8 March 1974, you received non-judicial punishment (NJP) for violation of Uniform Code of Military Justice (UCMJ) Article 86, for failure to go to your appointed place of duty, and Article

91, for willfully disobeying an order. On 9 May 1974, you were found guilty at Special Court Martial (SPCM) violating UCMJ Article 92, for two instances of disobedience. On 1 August 1974, you were again found guilty at SPCM violating UCMJ Article 92, for carrying a concealed weapon, and Article 127, by communicating a threat to unlawfully obtain \$50. You were sentenced to four months confinement, forfeitures of pay, and a Bad Conduct Discharge (BCD). After serving your period of confinement but prior to your discharge, you began a series of unauthorized absences (UA) on 12 December 1974. You remained absent until you were taken into military custody, on 5 January 1976, after a total of 381 days in a UA status.

On 3 February 1976, you received a Neuropsychiatric Evaluation, wherein the Psychologist notes "there were no indications...that he was unintelligible or incoherent (i.e., no overt evidence of psychosis). There are no counterindications [*sic*] to any action deemed appropriate by the court." Ultimately, you were deemed medically fit for separation on 9 May 1989, and you were discharged from the Marine Corps with a BCD as a result of SPCM and assigned an RE- 4 reentry code.

The Board carefully considered all potentially mitigating and/or extenuating 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: (a) your desire to upgrade your characterization of service, (b) your contention that you suffered from undiagnosed PTSD, and (c) your contention that you did not understand the papers that you were forced to sign. For purposes of clemency and equity consideration, the Board noted you did not provide documentation related to your post-service accomplishments or character letters.

In your petition, you contend that you suffered from PTSD. As part of the Board review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records and issued an AO dated 9 November 2022. The Ph.D. noted in pertinent part:

There is no evidence that he 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. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. 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, particularly given his pre-service behavior that appears to have continued during military service.

The Ph.D. concluded, "it is my considered clinical opinion there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to PTSD."

After thorough review, the Board concluded the potentially mitigating factors were insufficient to warrant relief. Specifically, the Board felt that your misconduct, as evidenced by your NJP and two SPCMs, outweighed these mitigating factors. In accordance with the Kurta, Hagel, and Wilkie Memos, the Board gave liberal and special consideration to your record of service, and your contentions about incurring a TBI and the stressful events occurring your life that impacted

your service. The Board considered the seriousness of your repeated misconduct and the fact that it involved the communication of a threat. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command. The Board determined that your conduct was contrary to Marine Corps values and policy and poses an unnecessary risk to the safety of fellow Marines. In making this determination, the Board concurred with the advisory opinion that there was no convincing evidence of a diagnosis of PTSD that may be attributed to military service or evidence that your misconduct could be attributed to PTSD.

As a result, the Board concluded that your misconduct was not due to mental health-related symptoms. The Board noted that your Neuropsychiatric Evaluation noted no psychiatric or neurologic conditions or symptoms. It also noted that there were no indications that you were unintelligible or incoherent. Moreover, the Board observed that you did not submit any clinical documentation or treatment records, either in-service or post-service, to support your claims of PTSD or other mental health concerns. The Board found that your active duty misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should otherwise not be held accountable for your actions. The Board felt that you received advice from qualified counsel through the court martial process and were aware of your rights. As a result, the Board concluded that your conduct constituted a significant departure from that expected of a Marine and continues to warrant a BCD, as issued by the court.

Finally, the Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. Therefore, 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 that your request does not merit relief.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

1/11/2023

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Executive Director  
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