



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

█
Docket No: 6038-22
Ref: Signature Date



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 limitation 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 18 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) (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). Additionally, the Board also considered an advisory opinion (AO) furnished by qualified mental health provider and your response to the AO.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Marine Corps and entered active duty on 1 December 1971. Your pre-enlistment medical examination, on 11 November 1971, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

On 18 July 1972, you received non-judicial punishment (NJP) for unauthorized absence (UA) that lasted thirty-seven (37) days, and for failing to sign restriction papers. You did not appeal your NJP.

On 28 July 1972, you were convicted at a Summary Court-Martial of five separate specifications of insubordinate conduct, and for the destruction of military property. You were sentenced to confinement for thirty days and forfeitures of pay. \

On 11 September 1972, you received NJP for UA lasting nine (9) days. You did not appeal your NJP. On 26 September 1972, you received NJP for UA lasting five (5) days. You did not appeal your NJP.

On 16 January 1973, you were convicted at a Special Court-Martial (SPCM) of three separate UA specifications (22 days, 6 days, and 25 days, respectively). You were sentenced to confinement for three months, forfeitures of pay, and a discharge from the Marine Corps with a Bad Conduct Discharge (BCD). On 4 April 1973, the Convening Authority approved the SPCM sentence as adjudged, except suspended any confinement still to be served. On appellate review, the U.S. Navy Corps of Military Review affirmed the SPCM findings and sentence on 23 May 1973. On 31 May 1973, the Naval Clemency and Parole Board declined to grant you any clemency. Upon the completion of appellate review in your case, on 9 October 1973, you were discharged from the Marine Corps with a BCD.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Hagel, Kurta, and Wilkie Memos. These included, but were not limited to, your desire for a discharge upgrade and contentions that: (a) you were told you were going to get a general discharge under honorable conditions, (b) you only had an eighth grade education and couldn't understand what your lawyer was telling you, (c) you were scared of the people in the courtroom and just did what you were told to do by your attorney and the judge gave you a BCD, (d) you have lived with this terrible discharge since you were 19 years old and are 68 years old now, (e) you have been a good person and tried to help other people in life, and (f) you did well at boot camp and █
█ 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 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 14 October 2022. The Ph.D. stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition or PTSD

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

In response to the AO, you submitted a statement that provided additional information regarding the circumstances of your case.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. 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 any traumatic or stressful events you experienced and their possible adverse impact on your service. However, the Board concluded that there was no convincing evidence of any nexus between any mental health conditions and/or related symptoms and your misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct that formed the basis of your punitive discharge. As a result, the Board concluded that your SPCM misconduct was not due to mental health-related conditions or symptoms. Even if the Board assumed that your cumulative misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record clearly reflected that your misconduct was willful and intentional, and demonstrated you were unfit for further service. The Board concluded that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not be held accountable for your actions.

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. Additionally, absent a material error or injustice, the Board generally will not summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, medical care, or enhancing educational or employment opportunities. As a result, the Board determined that there was no impropriety or inequity in your discharge, and even under the liberal consideration standard for mental health conditions, the Board concluded that your serious misconduct and disregard for good order and discipline clearly merited your receipt of a BCD.

The Board also noted that, although it cannot set aside a conviction, it might grant clemency in the form of changing a characterization of discharge, even one awarded by a court-martial.

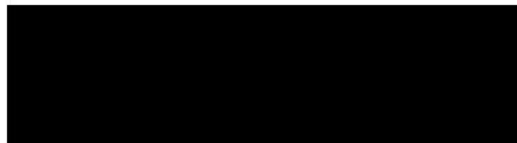


However, the Board concluded that despite your contentions this is not a case warranting any clemency. You were properly convicted at a SPCM of a serious misconduct, and the Board did not find any evidence of an error or injustice in this application that warrants upgrading your BCD. The simple fact remains is that you left the Marine Corps while you were still contractually obligated to serve and you went into a UA status without any legal justification or excuse on no less than six separate occasions. 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,

12/5/2022



Executive Director

Signed by: 