



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

██████████  
Docket No: 6391-22  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 Board waived the statute of limitation 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 16 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 the 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 to 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). The Board also considered the advisory opinion (AO) of a qualified mental health provider, which was previously provided to you. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

You enlisted in the Marine Corps with moral waivers for a criminal history of disorderly conduct, petty larceny, and assault and battery (reduced to disorderly conduct). Reference letters reflect that you were suspended from high school but that your former principle believed that military service would help you “to become the type of citizen” desired by society. Subsequently, you began a period of active duty on 27 October 1972. In April 1973, you absented yourself without authority for a period of three days for which you were subject to nonjudicial punishment (NJP) due to violating Article 86, unauthorized absence (UA), of the Uniform Code of Military Justice (UCMJ). You had a second NJP, in May of 1973, for another violation of Article 86 and for Article 107 due to making a false official statement. Thereafter,

you committed four additional periods of unauthorized absence during June and July of 1973, with the final absence which spanned from 20 July 1973 through 29 September 1973 terminating by your apprehension. You received a third NJP for using disrespectful language toward a noncommissioned officer. On the day your punishment of restriction ended, you again absented yourself two additional periods during October and November of 1973, both of which were again terminated by apprehension. You subsequently received two additional NJPs; the first for disobedience of a lawful order issued by a superior and false official statement, and the second for six specifications of UA. Your punishment included placement into correctional custody for a total of 50 days with 30 of those days suspended; however, you again absented yourself and returned to your home of record.

On 4 December 1973, you obtained the bank check of another individual and forged that person's signature on a \$35 check to yourself. For this misconduct, you were convicted by civilian authorities in ██████████ for uttering a forged instrument and sentenced to 1.5 years in jail. While incarcerated, you submitted a letter to the Commandant of the Marine Corps, addressing your absences without leave, your incarceration, and your desire to obtain your discharge, and you received a reply from Judge Advocate Division regarding the authority to separate you for a crime of moral turpitude. You remained in a UA status for 188 days from 24 June 1974 through 2 January 1975 while incarcerated in the hands of civil authorities (IHCA). On 22 August 1974, were notified of processing for an undesirable discharge by reason of conviction by civil authorities. You requested representation by counsel before an administrative board hearing. The Record of Proceedings for the hearing indicates that your legal counsel noted a discrepancy in the description of the civil offense regarding the value of the check, which was clarified during the hearing. Regardless, the members of the administrative board found you were guilty of the civil offense for which you had been convicted and recommended discharge for the reason of misconduct with an undesirable discharge in light of your moral turpitude. This recommendation was approved, and you were discharged on 2 January 1975.

You previously applied to the Board contending that you were very young at the time of your discharge but were a different person in the years since. You also argued that you required medical care. The Board denied your request on 17 April 2013.

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 your contentions that maltreatment and hazing during recruit training led you to use drugs to cope with your fear. For purposes of clemency and equity consideration, the Board noted you provided a personal statement, medical records, a statement to the Department of Veterans Affairs, and an advocacy letter.

Because you also contend that post-traumatic stress disorder (PTSD) affected your discharge, the Board also considered the AO. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service. Post-service, he has received a diagnosis of PTSD that is temporally remote to his military service. This diagnosis has been attributed to military service, by his report. However, it is difficult to attribute his misconduct to PTSD symptoms of avoidance or irritability, given his pre-service history of

behavior that appears to have continued in service. Additionally, it is difficult to determine how forgery and false official statements would be attributed to symptoms of PTSD.

The AO concluded, “it is my considered clinical opinion there is some post-service evidence of a diagnosis of PTSD that could be attributed to military service. There is insufficient evidence his misconduct could be attributed to PTSD.”

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Additionally, the Board concurred with the AO that there is insufficient evidence your misconduct could be attributed to a mental health condition. To the extent that you previously contended that you were a different person now than during your service, the Board also considered the advocacy letter submitted on your behalf; however, the Board observed that this letter primarily describes the change in your behavior and demeanor during your military service and your post-discharge struggles to overcome imprisonment and drug abuse. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. While the Board commends your post-discharge change in character and empathizes with your current medical situation, 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 the 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 is attached 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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