



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

██████████
Docket No. 7709-22
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 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 20 April 2023. The names and votes of the members of the panel 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, 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). In addition, the Board considered the 21 February 2023 Advisory Opinion (AO) from a qualified mental health professional, along with 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.

A review of your record shows that you entered active duty in the Marine Corps on 31 March 1978. On 3 November 1978, you accepted non-judicial punishment (NJP) imposed by your Commanding Officer (CO) for violating Article 86, of the Uniform Code of Military Justice

(UCMJ) for unauthorized absence (UA) from 19 July to 16 October 1978 . On 17 November 1978, you received your second NJP for UA for one day.

On 29 January 1980, you underwent a mental health evaluation which noted that you were “sincere in [your] beliefs about being a conscientious objector” and noted that you did not display and “psychiatric disturbance.” On 8 April 1980, you submitted an application for Humanitarian Discharge as a Conscientious Objector. On 1 June 1980, you underwent your third NJP for disrespect, and two specifications of disobedience. In November 1980, you received two NJPs for disrespect and disobedience. In December 1980, you received NJP for six specifications of disobedience and four specifications of disrespect. Ultimately, on 8 January 1981, you were voluntarily discharged with a General (Under Honorable Conditions) characterization of service as a conscientious objector.

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 for a discharge upgrade and contentions that you suffered from a mental health condition as a result of trauma incurred while on active duty, you did not receive any treatment, and were made an example by your command. For purposes of clemency and equity consideration, the Board noted you provided documentation showing that the Department of Veterans Affairs (VA) rated you at 50% for major depressive disorder with intermittent explosive disorder effective June 2015 and that you were diagnosed with post-traumatic stress disorder (PTSD) in February 2017.

Based on your assertions that you incurred a mental health condition (MHC) during your military service, which might have mitigated your discharge character of service, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. The absence of a mental health diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. Post-service, the VA has granted service connection for a mental health condition and a civilian provider has diagnosed PTSD that is temporally remote to military service and attributed to military service. As the traumatic precipitant occurred after the mental health evaluation, it is possible that his misconduct of disrespect and disobedience after March 1980 could be conceptualized as symptoms of irritability and hyperarousal from undiagnosed PTSD. However, his UA occurred prior to the traumatic event and could not be attributed to PTSD.

The AO concluded, “it is my clinical opinion there is post-service evidence of a diagnosis of PTSD from a civilian provider that may be attributed to military service. There is post-service evidence of a diagnosis of a mental health condition that the VA has attributed to military service. There is insufficient evidence to attribute all of his misconduct to PTSD or another mental health condition.”

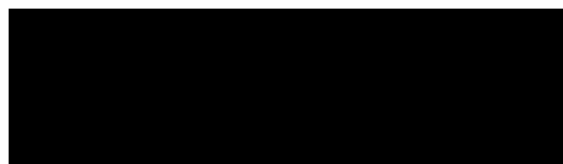
In response to the AO, you submitted a personal statement that provided additional information regarding the circumstances of your case. After reviewing your response, the AO remained unchanged.

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 four NJPs and numerous formal counseling entries, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact it had on the good order and discipline of your command. Further, the Board concurred with the AO that there is insufficient evidence to attribute all of your misconduct to PTSD or another mental health condition. The Board noted that that you committed two instances of UA prior to the traumatic incident and that there was no evidence that you received treatment for a mental health condition until thirty-six years after your discharge. This led the Board to conclude all of your misconduct could not be attributed to your diagnosed mental health condition. Consequently, the Board concluded significant negative aspects of your service outweighed the positive aspects and continues to warrant a General (Under Honorable Conditions) characterization.

Regarding your request for a disability discharge, the Board found no evidence that you suffered from an unfitting condition that prevented you from performing the duties of your office, grade, rank, or rating. While the Board noted some of your misconduct may be attributed to a mental health condition, there was no evidence a mental health condition prevented you from performing your duties. Instead, the Board noted that you were voluntarily discharged as a result of your request due to your status as a conscientious objector. Therefore, even in light of the Wilkie Memo and reviewing the record liberally and holistically, the Board did not find evidence of an error or injustice that warrants granting you the relief you requested or granting relief 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,

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Deputy Director

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