



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

[REDACTED]
Docket No. 8451-22

Ref: Signature Date

[REDACTED]

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 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 27 March 2023. 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 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). As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an Advisory Opinion (AO) on 8 February 2023. Although you were provided with an opportunity to submit a rebuttal to the AO, you chose not to do so.

You enlisted in the U.S. Marine Corps and began a period of active duty on 4 February 1976. On 22 December 1976, you were found guilty at a summary court-martial (SCM) of unauthorized absence (UA) and sentenced to forfeit \$125.00 pay per month for one (1) month, to be reduced in rank to E-1, and to be restricted for 60 days. On 30 March 1977, you were found guilty at a second SCM of UA, willfully disobeying a lawful order, assault, escape from lawful custody, and breaking restriction. You were sentenced to forfeit \$200.00 pay per month for one (1) month. Subsequently, you were counseled numerous times regarding your conduct and advised that if said conduct did not meet acceptable standards you could be processed for discharge. On 8 June 1977, you were found guilty at a third SCM of six (6) specifications of

UA, two (2) specifications of assault, and two (2) specifications of willfully disobeying a lawful order. You were sentenced to forfeit \$200.00 pay per month for one (1) month and confinement at hard labor (CHL) for 30 days (your CHL was mitigated to restriction for 18 days). On 29 July 1977, you received your first nonjudicial punishment (NJP) for larceny and assault. This was followed by a second NJP, on 7 August 1977, for two (2) specifications of UA from your appointed place of duty, and violating a regulation. Ten days later, you received a third NJP for UA from appointed place of duty and violating a regulation.

As a result, on 15 September 1977, you were notified of your pending administrative separation proceedings by reason of misconduct due to frequent involvement of a discreditable nature with military authorities, at which time you elected your right to consult with military counsel but waived your right to have your case heard before an administrative discharge board. On 15 September 1977, your commanding officer (CO) recommended to the separation authority that you be discharged with an Other Than Honorable (OTH) characterization of service by reason of misconduct due to the aforementioned reason. On 25 October 1977, your CO drafted an additional recommendation to the separation authority capturing you were under investigation for theft of over \$600.00 worth of camera equipment and clothing from another Marine, as well as theft by forgery of \$300.00 from unauthorized checks written to Navy Federal Credit Unit.

On 14 December 1977, you were re-notified of pending administrative separation and again elected your right to consult with military counsel but waived your right to have your case heard before an administrative discharge board. On 23 December 1977, a staff judge advocate's review of your case found the proceedings were sufficient in law and fact. On 16 January 1978, you were discharged with an OTH.

On 25 February 1981, your request for a discharge upgrade via the Naval Discharge Review Board was denied.

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 characterization of service and your contention that you incurred PTSD symptoms during military service. For purposes of clemency and equity consideration, the Board noted you provided medical records related to your cancer diagnosis and memory loss, but no documentation describing post-service accomplishments or advocacy letters.

Based on your assertions that you incurred PTSD symptoms during military service, which might have mitigated your discharge characterization 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:

There is no evidence that the Petitioner 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 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 that his misconduct could be attributed to a mental health condition.”

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 SCMs and 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. Further, the Board concurred with the AO that there is insufficient evidence of a mental health condition that may be attributed to your military service or misconduct. 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 of service. While the Board carefully considered the evidence you submitted in mitigation, 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 granting you the relief you requested or granting relief as a matter of clemency or equity. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. Accordingly, given the totality of the circumstances, the Board determined 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,

4/6/2023

█

Executive Director

Signed by: █