

## **DEPARTMENT OF THE NAVY**

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

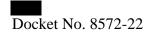
> Docket No. 8572-22 Ref: Signature Date

Dear :

This is in reference to your application for correction of your spouse's naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of his 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 10 April 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 this Board. Documentary material considered by the Board consisted of your application together with all material submitted in support thereof, relevant portions of your spouse's 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)/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, dated 24 February 2023. Although you were provided an opportunity to comment on the AO, you chose not to do so.

Your spouse entered active duty with the Marine Corps on 10 August 1992. On 9 July 1993, he received non-judicial punishment (NJP) for disrespectful language toward a non-commissioned officer (NCO), two specifications of disrespect toward an NCO, making a false official statement, disobeying a lawful order, and dereliction in the performance of duty. On 12 October 1993, he received NJP for disobeying a lawful regulation and dereliction in the performance of duty. On 29 March 1994, he received NJP for assault and three specifications of wrongfully communicating a threat. He did not appeal any of the NJPs.



Subsequently, he was notified of pending administrative separation action by reason of misconduct due to a pattern of misconduct. He elected to consult with legal counsel and requested an administrative discharge board (ADB). In November 1994, the ADB found that he committed misconduct due to pattern of misconduct and recommended he be separated with an Other Than Honorable (OTH) characterization of service. The separation authority (SA) concurred with the ADB recommendation and directed an OTH discharge by reason of pattern of misconduct. On 27 January 1995, he was so discharged.

Your spouse previously applied to this Board for a discharge upgrade but was denied on 20 June 2012. The Board determined the mitigation evidence he submitted in support of his request was insufficient to offset the seriousness of his misconduct.

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 spouse's discharge and contentions that he incurred Post Traumatic Stress Disorder (PTSD) and other mental health conditions during military service, which might have mitigated the circumstances of his misconduct and discharge, and that he was a good Marine who loved his job. For purposes of clemency and equity consideration, the Board noted you provided a personal statement and supporting documentation describing his post-service accomplishments, but no advocacy letters.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 24 February 2023. The mental health professional stated in pertinent part:

There is no evidence the Petitioner spouse 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. Petitioner has provided post-service evidence of diagnoses of PTSD and another mental health condition that are temporally remote to military service and appear unrelated, with no information regarding symptoms or onset. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly given pre-service behavior that appears to have continued in service. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your spouse's misconduct, as evidenced by his three NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of his misconduct and the likely negative impact his conduct had on the good order and discipline of his command. Further, the Board concurred with AO

that there is insufficient evidence of a mental health condition that may be attributed to his military service or misconduct. The Board agreed, based on the lack of evidence, that his active duty misconduct appeared to be a continuation of his pre-service behavior. 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 carefully considered the evidence you provided in mitigation and offered their condolences for your loss, 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 spouse's 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 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.

