



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

█  
Docket No. 9131-22  
Ref: Signature Date

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Dear █:

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 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 24 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 service 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. Although you were given the opportunity to provide a response to the AO, you chose not to do so.

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 United States Marine Corps and commenced a period of service on 18 February 1977. On 8 April 1977, you received non-judicial punishment (NJP) for violation of Uniform Code of Military Justice (UCMJ) Article 128, for assault, and Article 92 for an orders violation. On 5 June 1978, you received your second NJP for violating UCMJ Article 86, for

failure to go to your appointed place of duty. On 4 May 1979, you received your third NJP for violating UCMJ Article 86, for a three hour period of unauthorized absence (UA) from your appointed place of duty. On 5 July 1979, you received your fourth NJP for violating UCMJ Article 92, for dereliction in the performance of your duties, and Article 86, for absence from your appointed place of duty. On 18 July 1979, you received your fifth NJP for violating UCMJ Article 91, for disobedience, and Article 86, for absence from your appointed place of duty. On 7 January 1980, you received your sixth NJP for violating UCMJ Article 91, for two specifications of disobedience, and Article 86, for three specifications of absence from your appointed place of duty. On 17 March 1980, you received your seventh NJP for violating UCMJ Article 86, for absence from your appointed place of duty. On 21 August 1980, you received your eighth NJP for violating UCMJ Article 86, for two periods of UA totaling 8 days. You did not appeal any of these NJPs. Additionally, during this period you were also formally counseled on seven occasions concerning your performance of duty, poor attitude, lack of initiative, and other disciplinary matters.

On 29 August 1980, your command initiated administrative separation proceedings by reason of misconduct due to frequent involvement with military authorities. You waived your right to consult with qualified counsel and your right to an administrative separation board. Prior to your separation from service, you received your ninth and final NJP for violations of UCMJ Article 91, for disrespect and disobedience. On 5 November 1980, you were discharged from the Marine Corps with an Other Than Honorable (OTH) characterization of service and assigned an RE-4 reenlistment code.

You previously submitted an application to this Board and were denied relief on 24 April 2007.

The Board carefully considered all potentially mitigating and/or extenuating 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: (a) your desire to upgrade your characterization, (b) your contention that you were struggling with undiagnosed mental health issues during service, and (c) the impact that your mental health had on your conduct during service. For purposes of clemency and equity consideration, the Board noted that you provided documentation related to your post-service accomplishments and character letters.

In your request for relief, you claim that you incurred PTSD when you were attacked by civilians in a █ village while on temporary assignment. 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 2 March 2023. The Ph.D. noted in pertinent part:

There is no evidence that he 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. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly as his misconduct continued throughout his entire

period of 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 Ph.D. concluded, "it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence his misconduct may be attributed to PTSD."

After thorough review, the Board concluded the 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 mental health and the possible adverse impact your mental health had on your conduct during service. Specifically, the Board felt that your misconduct, as evidenced by your nine NJPs and seven counseling chits, outweighed these mitigating factors. The Board considered the seriousness of your misconduct and the fact that it involved repeated periods of UA. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command. The Board determined that such misconduct is contrary to Marine Corps values and policy, renders such Marine unfit for duty, and poses an unnecessary risk to the safety of fellow service members.

In making this determination, the Board concurred with the advisory opinion that there is no medical evidence to support a mental health condition diagnosis either during or post service. Throughout the disciplinary process, you did not raise any concerns related to mental health that could have been reviewed or considered in mitigation, or that would have triggered a mental health evaluation. Due to a lack of evidence, the Board concluded that your misconduct was not due to mental health-related symptoms, rather, was intentional and demonstrated you were unfit for further service. As a result, the Board determined your conduct constituted a significant departure from that expected of a Marine and continues to warrant an OTH characterization. While the Board commends your post-service accomplishments and 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 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,

5/2/2023

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Executive Director

Signed by: █