



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

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Docket No. 1754-23/
8841-15
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 4 October 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 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). The Board also considered an advisory opinion (AO) from a qualified mental health professional, dated 28 August 2023. Although you were provided an opportunity to comment on the AO, you chose not to do so.

You entered active duty with the Marine Corps on 31 January 1974. On 14 February 1975, you received non-judicial punishment (NJP) for failure to obey a lawful order. On 2 March 1975 and 27 March 1975, you received NJP for disobeying a lawful order from a superior officer and unauthorized absence (UA) totaling two days. Between 4 April 1975 and 23 April 1975, you received three NJPs for loss of government property, two specifications of absence from appointed place of duty and failure to obey a lawful order. On 26 June 1975, you were formally counseled on your frequent involvement with military authorities. On 16 October 1975, you received NJP for disrespect toward a superior non-commissioned officer (NCO). On 28 October 1975, a special court-martial (SPCM) convicted you of two specifications of UA totaling 80 days. On 25 November 1975, you received an additional NJP for failure to be at appointed place of duty. On

16 December 1975, you were formerly counseled on your frequent involvement with military authorities.

Subsequently, you were notified of pending administrative separation action by reason of misconduct due to frequent involvement with military authorities. You elected to consult with legal counsel and subsequently requested an administrative discharge board (ADB). The ADB found that you committed misconduct due to frequent involvement with military authorities and recommended you be separated with an Other Than Honorable (OTH) characterization of service. The separation authority (SA) concurred with the ADB and directed an OTH discharge by reason of misconduct due to frequent involvement with military authorities. On 4 April 1976, you received NJP for UA from your appointed place of duty. On 16 April 1976, you were discharged with an OTH.

You previously applied to this Board for a discharge upgrade but were denied on 11 December 2015. The Board determined the mitigation evidence you submitted in support of your request was insufficient to offset the seriousness of your misconduct, which resulted in multiple NJPs and a SPCM conviction.

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 contentions that you incurred PTSD/mental health concerns during military service, which might have mitigated your discharge characterization of service. For purposes of clemency and equity consideration, the Board noted you provided a letter from █ but no supporting documentation describing post-service accomplishments or 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 28 August 2023. The AO stated in pertinent part:

The Petitioner submitted a letter from █ dated January 18, 2023 indicating that the Petitioner had been diagnosed with Depression and PTSD "approximately 10 years ago," which is still quite temporally remote to service. Additionally, the letter does not mention any further rationale or history for the diagnoses. There is no evidence that the Petitioner was diagnosed with a mental health condition or suffered from PTSD while in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. 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 your misconduct, as evidenced by your NJPs and SPCM conviction, outweighed these potential mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded that your conduct showed a complete disregard for military authority and regulations. Further, the Board considered the likely negative impact your conduct had on the good order and discipline of your command. In addition, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to PTSD or another mental health condition. The Board noted that there is no evidence in your record, and you submitted none, to support your contention of incurring a mental health concerns as a result of serving in the Marine-Corps. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Marine and continues to warrant an OTH characterization. While the Board carefully considered the evidence you provided in mitigation, even in light of the Kurta, Hagel, and Wilkie Memos 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. 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 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,

10/14/2023

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