



**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. 2592-23

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 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 27 November 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 afforded an opportunity to submit an AO rebuttal, 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 1 March 1972. On 28 September 1973, while on active duty, you were involved in a motor vehicle accident. In October 1973, you received a follow-up evaluation of injuries you sustained from the accident which noted that you “received a scalp lacer[ation] and was sutured at civ[ilian] hospital.”

The skull x-ray was negative, however, you reported on-going headaches without nausea or vomiting, with reactive pupils, normal reflexes, and stable balance. You were placed on limited duty for four days before returning to duty with instruction to return to medical if your symptoms continued or worsened. On 6 September 1974, you were evaluated by psychiatry for “situational anxiety [secondary] to unknown facts [regarding] auto accident which may or may not have injured a companion.” As the anxiety was linked to a lack of information, you were referred to the Chaplain for advice and information. On 11 November 1974, you returned to psychiatry expressing “anxiety over [your] present adjustment. Specifically, [you were] concerned over lower back pain which began after an auto accident.” The psychiatrist referred you for a medical evaluation regarding your back pain, however, follow-up treatment is not found in your service health record. The physician noted that once you were medically cleared, he would re-evaluate you for an emotional disorder.

On 17 October 1974, you received non-judicial punishment (NJP) for Uniform Code of Military Justice (UCMJ) violation of Article 86, for absence from your appointed place of duty. On 9 April 1975, you received your second NJP for violation of UCMJ Article 92, for disobeying a lawful order. You did not appeal either NJP. On 20 May 1975, you were formally counseled for frequent involvement with military authorities and advised that further misconduct could result in your undesirable discharge.

On 5 May 1976, after consulting with Judge Advocate counsel, you requested discharge in lieu of trial by court martial for four periods of unauthorized absence (UA) between April and July 1975 and January and May 1976, totaling 149 days, two specifications of disobedience, three specifications of disrespect, and an assault. You acknowledged that your discharge would be characterized as Under Other Than Honorable (OTH) conditions, which could negatively impact your veterans’ benefits. The separation authority granted your request and, on 19 May 1976, you were discharged from the Marine Corps with an OTH characterization of service and assigned an RE- 4 reentry code.

You previously submitted a petition to the Naval Discharge Review Board (NDRB) and were denied relief on 17 January 1980. You also petitioned this Board and were denied relief on 17 August 1983 and 13 July 2005.

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 of service, (b) your contention that you were suffering from undiagnosed mental health issues during service, and (c) the impact that your mental health had on your conduct. 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 contend that you suffered from a Traumatic Brain Injury (TBI), Post Traumatic Stress Disorder (PTSD), and a Mental Health Condition (MHC) as a result of a

motor vehicle accident that occurred during your service, which contributed to your misconduct and ultimately led to your discharge. You assert that you were deployed before you were fully healed from the accident. You also note that the Camp Lejeune water contamination may have contributed to your misconduct. 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 11 October 2023. The Ph.D. noted in pertinent part:

There is in-service evidence of head injury, for which the Petitioner received treatment. He complained of residual headaches following this incident for about ten months. There is no other information regarding on-going residual symptoms suggestive of a TBI or occupational impairment. There is in-service evidence of situational anxiety, which was not deemed to be sufficiently impairing to warrant a mental health diagnosis. The Petitioner has provided no medical evidence in support of his claims. Unfortunately, there is insufficient information to attribute his misconduct to symptoms of PTSD, TBI, or another mental health condition, given his conflicting accounts regarding his misconduct over time. Additional records (e.g., post-service mental health records describing the Petitioner's diagnoses, symptoms, and their specific link to his separation) may aid in rendering an alternate opinion.

The Ph.D. concluded, "it is my clinical opinion there is in-service evidence of a head injury. There is insufficient evidence of residual TBI symptoms over time. 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 the circumstances of his separation to PTSD, TBI, or another mental health condition."

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 undiagnosed mental health issues and the possible adverse impact on your service. Specifically, the Board felt that your misconduct, as evidenced by your NJPs and your request for separation in lieu of trial (SILT) by court martial, outweighed these mitigating factors. The Board considered the seriousness of your misconduct and the fact that it involved extended and repeated periods of UA and assault. 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, and placed an undue burden on fellow service members. The Board highlighted that you requested a SILT, thereby avoiding a possible court martial conviction and punitive discharge. The Board felt that the separation authority already granted you clemency by accepting your separation in lieu of trial by court martial.

In making this determination, the Board concurred with the advisory opinion that there was no convincing evidence that you suffered from any type of mental health condition while on active

duty, or that any such mental health condition was related to or mitigated the misconduct that formed the basis of your discharge. While there is in-service evidence of a head injury for which you received treatment, there is no other evidence of on-going residual symptoms suggestive of a TBI or occupational impairment. Further, you did not provide any post-service medical documents in support of your contention about a mental health diagnosis and your personal statement fails to draw sufficient nexus to the underlying misconduct. The Board determined the record clearly reflected that your active duty misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should otherwise not be held accountable for your actions. You were provided the assistance of qualified counsel throughout the disciplinary process and you never raised any issues concerning your mental health during this process. The Board concluded that your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. While the Board commends your post-service accomplishments to date, they concluded that additional evidence of post-service accomplishments and a longer period of sobriety could assist them in rendering a different result. Therefore, 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 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,

12/3/2023

