



**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. 3419-23  
Ref: Signature Date



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 27 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). Additionally, the Board also considered the advisory opinion (AO) furnished by a qualified mental health provider.

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 U.S. Marine Corps and began a period of active duty service on 11 November 1976. Your pre-enlistment physical examination, on 16 September 1976, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

On 2 May 1979, you received non-judicial punishment (NJP) for two separate specifications of insubordinate conduct. You did not appeal your NJP. On 1 June 1979, you received NJP for disrespect toward a superior commissioned officer, and the willful disobedience of a superior commissioned officer. You appealed your NJP but higher authority denied the appeal on 16 June 1979.

On 24 August 1979, you received NJP for disrespect toward a superior commissioned officer. You did not appeal your NJP. On 15 November 1979, your command issued you a "Page 11" retention warning (Page 11) documenting your frequent involvement with military authorities. The Page 11 advised you that continued misconduct could result in being processed for administrative separation.

On 16 November 1979, you received NJP for two separate specifications of insubordinate conduct, disrespect toward a superior commissioned officer, and the willful disobedience of a superior commissioned officer. You did not appeal your NJP.

On 4 April 1980, you again received NJP for two separate specifications of insubordinate conduct, disrespect toward a superior commissioned officer, and the willful disobedience of a superior commissioned officer. You did not appeal your NJP.

On 23 April 1980, you received non-judicial punishment NJP for disrespect toward a superior commissioned officer, and the willful disobedience of a superior commissioned officer. You did not appeal your NJP. On 12 June 1980, a physical examination did not note any psychiatric or neurologic conditions or symptoms.

On 12 September 1980, you submitted a voluntary written request for an administrative discharge for the good of the service under General (Under Honorable Conditions) (GEN) to avoid trial by court-martial for five separate specifications of insubordinate conduct, one of which included assaulting a senior non-commissioned officer. You voluntarily admitted you were guilty of your charged offenses, and you acknowledged if your request was approved your discharge characterization would be GEN. Unfortunately, the Commanding General, █, █, disapproved your request on 16 September 1980.

On 17 September 1980, you submitted a voluntary written request for an administrative discharge for the good of the service under Other Than Honorable conditions (OTH) to avoid trial by court-martial for your five separate insubordinate conduct offenses. Prior to submitting this voluntary discharge request, you conferred with a qualified military lawyer at which time you would have been advised of your rights and warned of the probable adverse consequences of accepting such a discharge. You voluntarily admitted you were guilty of your charged offenses, and you acknowledged if your request was approved your discharge characterization would be OTH. As a result of this course of action, you were spared the stigma of a court-martial conviction for your multiple charges, as well as the potential sentence of confinement and the negative ramifications of receiving a punitive discharge from a military judge. Ultimately, on 16 October 1980, you were separated from the Marine Corps in lieu of a trial by court-martial with an OTH discharge characterization and assigned an RE-4 reenry code.

On 14 June 1982 the Naval Discharge Review Board (NDRB) denied your application for relief. On 14 January 2004, this Board denied your initial discharge upgrade request. The Board noted that you did not proffer any mental health contentions with either of your NDRB or BCNR petitions.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Hagel, Kurta, and Wilkie Memos. These included, but were not limited to, your desire to upgrade your characterization of service, and change your narrative reason for separation and reentry code. You contend: (a) your undiagnosed and untreated PTSD affected your ability to serve satisfactorily and mitigated the conduct that led to your discharge, (b) relief is warranted because, considering the factors from the most recent regulation regarding discharge upgrades, your application should be viewed favorably, (c) your PTSD and your experience in the Marines warrants an upgrade in your discharge status, and your PTSD is a clear example of a personal problem that affected your ability to serve satisfactorily, (d) you continue to suffer from PTSD symptoms and your paranoia and anxiety stemming from your experiences in the Marines has stayed with you throughout your life, and (e) you regret your actions but feel that your current discharge status does not truly reflect the service you performed for your country, particularly considering the extreme psychological distress you suffered as a young Marine struggling to cope with his trauma leading up to the time of your misconduct. For purposes of clemency and equity consideration, the Board considered the entirety of the evidence you provided in support of your application.

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 18 October 2023. The Ph.D. stated in pertinent part:

During military service, the Petitioner was diagnosed with mental health concerns associated with the loss of his fiancé. Post-service, he has been diagnosed with PTSD that has been attributed to military service. Petitioner's misconduct does follow the reported death of his fiancé. It is possible to attribute his disobedience and disrespect to irritability associated with depression symptoms or unrecognized PTSD symptoms.

The Ph.D. concluded, "it is my clinical opinion there is in-service evidence of a mental health condition that may be attributed to military service. There is post-service evidence from a civilian psychologist of a diagnosis of PTSD that has been attributed to military service. There is 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. In accordance with the Hagel, Kurta, and Wilkie Memos, the Board gave liberal and special consideration to your record of service, and your contentions about any traumatic or stressful events you experienced and their possible adverse impact on your service. However, notwithstanding the favorable AO, the Board concluded there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct forming the basis of your discharge. Moreover, even if the Board assumed that your misconduct was attributable to any mental health conditions, the Board unequivocally concluded

that the severity of your cumulative misconduct occurring over approximately a 15-month span of time (April 1979 - July 1980), far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that your misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also concluded that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not be held accountable for your actions.

The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Marine. 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 submitted 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 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,

10/31/2023

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Executive Director

Signed by: █