



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

■  
Docket No. 4813-23

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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session, considered your application on 20 December 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 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (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 the advisory opinion (AO) furnished by a qualified mental health professional and your response to the AO.

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 previously applied to this Board for an upgrade to your characterization of service and were denied on 11 December 2015. Before this Board's denial, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 30 January 1989, based on their determination that your discharge was proper as issued. The facts of your case remain substantially unchanged.

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 change your discharge character of service to Honorable and contentions that: (1) you had no idea of the possible ramification nor the existence of the toxic water issue at Camp Lejeune and the possible mental health issues that could arise, (2) you suffered from an undiagnosed reaction to the toxic water at Camp Lejeune which caused neurobehavioral issues causing brain damage to your frontal lobe and/or your left frontal cortex. This damage then caused you difficulty inhibiting your actions and exposing yourself, (3) you believe that had the information concerning █ been known at that time you could have used it in your defense of your charges, and (4) you further believe that as a child suffering through physical abuse that you may have suffered some type of frontal lobe brain damage and adding that to the toxic water at █ this might explain why your behavior started in 1986, four years after being stationed at █. For purposes of clemency and equity consideration, the Board noted you provided a personal statement and health care documents 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 24 November 2023. The AO noted in pertinent part:

Petitioner was appropriately evaluated during his enlistment. His adjustment disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to divulge, and the psychological evaluation performed by the mental health clinician. It was attributed to a stress reaction to his legal predicament, rather than a cause of his misconduct. Post-service, he has received diagnoses of Exhibitionism and Personality Disorder from a civilian psychologist. His in-service misconduct appears to be consistent with his diagnosed personality disorder, rather than evidence of PTSD or another mental health condition incurred in or exacerbated by military service. Unfortunately, there is insufficient evidence of TBI symptoms during military service that required treatment or follow-up. 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, TBI, or another mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD, TBI, or another mental health condition."

In response to the AO, you provided a personal statement that supplied additional clarification of the circumstances of your case.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your civilian convictions, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded your misconduct showed a complete disregard for military authority and regulations. The Board also considered the negative impact your conduct likely had on the good order and discipline of your unit and the discrediting nature of your civilian convictions had on the Marine Corps. Additionally, the Board found that your misconduct was intentional and made you unsuitable for continued naval service. Further, the Board concurred with the AO that there is insufficient evidence of a diagnosis of PTSD, TBI, or another mental health condition that may be attributed to military service, and there is insufficient evidence to attribute your misconduct to PTSD, TBI, or another mental health condition. Therefore, the Board 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. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits or enhancing educational or employment opportunities. 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.

Regarding your assertion concerning Camp Lejeune, Public Law 112-154, Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012, requires the Veterans Administration to provide health care to Veterans with one or more of 15 specified illnesses or conditions. You should contact the nearest office of the Department of Veterans Affairs (VA) concerning your right to apply for benefits or appeal an earlier unfavorable determination.

Furthermore, in reviewing your record, the Board believes that you may be eligible for veterans' benefits which accrued during your prior period of Honorable service. However, your eligibility is a matter under the cognizance of the VA. In this regard, you should contact the nearest VA office concerning your rights, specifically, whether or not you are eligible for benefits based on your prior period of Honorable service.

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,

1/16/2024

