



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

█  
Docket No. 5583-23  
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 reconsideration application on 26 January 2024. 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 an advisory opinion (AO) furnished by qualified mental health providers and your response to the AO.

You enlisted in the U.S. Marine Corps and began a period of active duty service on 23 March 1962. Your pre-enlistment physical examination, on 16 March 1962, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms.

On 22 March 1965, while you were attached to the ██████████ detachment at the ██████████, you received non-judicial punishment (NJP) for: (a) driving a ██████████ vehicle in a reckless manner on 8 February 1965, causing the vehicle to strike a steel fence and wall, and (b) committing an assault upon a USMC E-3 with a dangerous weapon likely to produce grievous bodily harm, to wit, a .38 caliber handgun. You did not appeal your NJP.

Following your NJP, Headquarters, U.S. Marine Corps (HQMC) requested a priority transfer for you from your ██████████ with the ██████████ following your command taking steps to relieve you of your ██████████ duty for unsuitability reasons. HQMC recommended that you be assigned to a ██████████ unit. You were subsequently assigned to ██████████.

On 21 June 1965, you received non-judicial punishment (NJP) for an unauthorized absence (UA) lasting six (6) days. You did not appeal your NJP. In September 1965, the Commanding General, ██████████ denied your security clearance of any category, and also terminated your interim security clearance for cause.

On 19 November 1965, you received NJP for insubordinate conduct. You did not appeal your NJP.

On 17 March 1966, you commenced a period of UA that terminated after nineteen (19) days in or around ██████████ on 5 April 1966. On 15 April 1966, you commenced another UA. On or about 16 May 1966, your command declared you to be a deserter. Your UA terminated after fifty-two (52) days in or around ██████████ on 6 June 1966.

On 15 June 1966, pursuant to your guilty pleas you were convicted at a Special Court-Martial (SPCM) for your two separate UAs totaling 71 days. You were sentenced to confinement for six (6) months, forfeitures of pay, a reduction in rank to the lowest enlisted paygrade (E-1), and a discharge from the Marine Corps with a Bad Conduct Discharge (BCD). On 17 June 1966, the Convening Authority approved the SPCM sentence as adjudged, except suspended any confinement in excess of five (5) months and the BCD, both for a period of six (6) months. On 29 June 1966, the General Court-Martial Convening Authority (GCMCA) approved the SPCM sentence as adjudged and partially suspended, except the GCMCA reduced your sentence further and suspended any confinement and forfeitures of pay in excess of four (4) months.

In the interim, you underwent a psychiatric evaluation on 28 July 1966. The attending clinical psychologist (CP) diagnosed you with passive-aggressive character traits, but not of sufficient severity to warrant formal diagnosis. The CP determined you had no disqualifying physical defects, and the CP recommended your administrative separation on the basis of unsuitability. On 1 September 1966, your physical examination noted no psychiatric or neurologic conditions or symptoms.

On 14 October 1966, you commenced another UA that terminated, after ten (10) days on 24 October 1966, in or around █. On 2 December 1966, due to your continuing misconduct, the GCMCA vacated the suspended BCD and ordered such discharge duly executed. On 8 December 1966, your separation physical examination noted no psychiatric or neurologic conditions or symptoms. The examining Medical Officer determined you were qualified for discharge and to perform the full duty of your rank “at sea, on foreign shore, and in the field.” Ultimately, on 12 December 1966, you were discharged from the Marine Corps with a BCD.

On or about 12 February 1976, you were issued a DD Form 215 documenting the Clemency Discharge (CD) you received from █. In 1977, the Naval Discharge Review Board declined to upgrade your CD.

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 for a discharge upgrade and change to your narrative reason for separation. You contend that: (a) the interests of equity and justice weigh in favor of the upgrade, and your alleged misconduct was the result of a compromised mental health condition caused by service-related injuries, (b) your petition must be considered with liberal consideration in finding that (1) your mental health condition existed during service and was a mitigating factor in the misconduct leading to your BCD, (2) your years of excellent military service prior to the misconduct and your post-service citizenship and conduct render your discharge status worthy of upgrade on the grounds of justice and equity and based on the totality of your life and circumstances, and (3) your post-discharge efforts to rehabilitate yourself and your honorable character as a husband, a father, and a citizen demonstrate that the misconduct leading to your discharge was an aberration and not reflective of your true character, (c) the record shows you suffered from mental health conditions within the meaning of the Hagel and Kurta Memos on active duty which mitigate the misconduct leading to your discharge, (d) you are also deserving of relief to correct an injustice and on grounds of clemency because your life and conduct post-discharge demonstrate that you have been an exemplary citizen, father, friend, and employee for eighteen years, (e) you have lived in shame due to your discharge status for nearly six decades, and you continue to suffer the consequences of his PTSD-related BCD, and (f) with discharge upgrade relief you can finally obtain much needed medical care as you enter the final chapter of your life. For purposes of clemency and equity consideration, the Board considered the entirety of the evidence you provided in support of your application, including your AO rebuttal submission.

As part of the review process, the BCNR Physician Advisors, one of whom is a licensed clinical psychologist, and the other who is a medical doctor and a Fellow of the American Psychiatric Association, reviewed your contentions and the available records and issued a joint AO on 14 December 2023. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. The absence of formal mental health diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. Although the Petitioner was not diagnosed with a mental health condition, there is behavioral evidence of a possible alcohol use disorder which does appear to have onset after the car accident and other purported traumatic incidents. Although he has provided no medical evidence to support his claims, his in-service misconduct appears to be consistent with his claims of a mental health condition incurred in or exacerbated by military service (e.g., personality changes post-MVA and TBI diagnosis for which his misconduct of insubordination may be attributed to increased irritability/anger issues that may arise from TBI). However, it is difficult to attribute his extended UA to TBI or a mental health condition, given his in-service statement that “he would prefer his discharge upon release from confinement...[due to family] financial difficulties and that he should return home to lend a hand. This is the major reason for his current predicament [following return from UA]. He is assured of several opportunities for employment as a civilian.” 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 that may be attributed to military service. There is in-service evidence of TBI, with residual headaches requiring treatment. There is insufficient evidence to attribute all of his misconduct to PTSD or TBI.”

Following a review of your AO rebuttal submission, the AO remained unchanged.

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, the Board concluded that there was no convincing evidence of any nexus between any mental health conditions and/or related symptoms and overwhelming majority of your misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the serious misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to mental health-related conditions or symptoms. Moreover, even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your misconduct 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 determined 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. Finally, the Board considered that your mental health mitigation claim is based, in part, on your claim of TBI that originated due to your own reckless behavior when you drove a government vehicle under the influence of alcohol and suffered crash-related injuries.

The Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average calculated from your available performance evaluations during your enlistment was approximately 3.83 in conduct. Marine Corps regulations in place at the time of your discharge recommended a minimum trait average of 4.0 in conduct (proper military behavior), for a fully Honorable characterization of service. The Board concluded that your misconduct was not minor in nature and that your conduct marks during your active duty career were a direct result of your cumulative misconduct.

The Board also noted that, although it cannot set aside a conviction, it might grant clemency in the form of changing a characterization of discharge, even one awarded by a court-martial. However, the Board concluded that despite your contentions this was not a case warranting any clemency as you were properly convicted at a SPCM of serious misconduct, and because your record also reflected a pattern of serious misconduct that was subject to multiple NJPs. The simple fact remained is that in addition to your reckless driving and assault offenses, you left the Marine Corps while you were still contractually obligated to serve and you went into a UA status on no less than four separate times without any legal justification or excuse for a total of approximately eighty-seven (87) days. Moreover, 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. Finally, the Board considered that you were provided substantial clemency when your BCD was initially suspended. However, you chose to continue to commit misconduct that resulted in your eventual punitive discharge. The Board also considered that you already received a clemency discharge in 1976. As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your misconduct and disregard for good order and discipline clearly merited your discharge. 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



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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,

2/1/2024

