



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. 7097-23
Ref: Signature Date

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Dear Petitioner:

This is in reference to your reconsideration request 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 9 November 2023. The names and votes of the members of the panel 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, applicable statutes, regulations, and policies, to include the Kurta Memo.

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.

A review of your record shows that you enlisted in the Marine Corps and entered active duty on 6 August 1973. On 23 January 1974, you accepted non-judicial punishment (NJP) for violating Article 92 of the Uniform Code of Military Justice (UCMJ) for failing to obey a lawful order by failing to get out of your rack. On 1 April 1974, you received your second NJP for violating Article 86 (Unauthorized Absence (UA)) of the UCMJ for being UA from 26 March 1974 to 27 March 1974. On 20 August 1974, you received your third NJP for violating Article 86 of the UCMJ by not being at your appointed place of duty on 19 August 1974. On 29 August 1974, you received your fourth NJP for violating Article 92 of the UCMJ by not signing out on liberty. On 23 October 1974, you received your fifth NJP for violating Article 86 of the UCMJ for being UA from 3 September 1974 to 11 September 1974. On 23 April 1975, you were convicted by summary court-martial (SCM) for violating Article 86 of the UCMJ for being UA from 8 February 1975 to 19 March 1975 and disobeying an order, in violation of Article 92, UCMJ. On 4 November 1975, you requested an administrative discharge for the good of the service based on misconduct that if tried by court-martial

could result in punitive discharge; specifically, UA from 16 May 1975 to 21 May 1975, 23 May 1975 to 27 July 1975, and 31 July 1975 to 3 October 1975. On 24 November 1975, you received your sixth NJP for violating Article 86 of the UCMJ, being UA from 31 October 1975 to 20 November 1975. On 25 November 1975, you were discharged from the Marine Corps with an Other Than Honorable characterization of service after submitting a request to be discharged in lieu of trial by court-martial.

The Board carefully considered your arguments that you suffer from seizures, which the seizures started in the beginning of 1975, and your misconduct was due to your seizure disorder. You further argue that you were supposed to have received a medical discharge. The Board noted you submitted this same request to the Board, which was denied on 10 May 2010. Moreover, you submitted reconsideration requests in 2012 and 2013, which the Board did not consider as you did not provide new material evidence. In light of the Kurta memo, the Board considered this reconsideration request and found no basis for relief.

Specifically, the Board again determined you were ineligible for disability processing since service regulations directed misconduct processing to supersede disability processing. Further, the Board was not persuaded by your argument that you incurred the condition on active duty as a 7 October 1975 and 23 November 1975 medical notes state you started experiencing seizures at the age of 12. Finally, the Board noted you provided no new material evidence to substantiate your contentions. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to merit an Other Than Honorable characterization, your request for a medical discharge is unwarranted, and your discharge was proper as issued.

You have submitted this request four times; the Board will not reconsider this issue without submission of new material evidence and 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,

12/11/2023

