



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: 5616-19/
0795-17
Ref: Signature Date



Dear █

This letter is in reference to your reconsideration request received on 4 June 2019. You previously petitioned the Board for Correction of Naval Records (Board) and were advised that your applications had been disapproved. Your case was reconsidered in accordance with Board procedures that conform to *Lipsman v. Sec'y of the Army*, 335 F. Supp. 2d 48 (D.D.C. 2004). After careful and conscientious consideration of the entire record, the Board found the evidence submitted was insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Because your application was submitted with new documentation, the Board found it in the interest of justice to review your most recent application. In this regard, your current request was carefully examined by a three-member panel of the Board, sitting in executive session, on 30 October 2020. 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, and applicable statutes, regulations and policies, as well as an advisory opinion (AO) from a qualified mental health professional dated 24 September 2020 and your AO rebuttal statement and documentation.

Regarding your request for a personal appearance, the Board determined a personal appearance with or without counsel will not materially add to their understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Marine Corps on 30 July 1979. On 29 September 1980, you received nonjudicial punishment (NJP) for being drunk and disorderly in public while in █. On 5 January 1981, you received a second NJP for a 28-day unauthorized absence (UA). On 14 February 1981, you were convicted by summary court-martial for dereliction in the performance of your duty when you fell asleep while on security watch and two instances of missing restriction muster. You began a period of UA on 4 March 1981. While in a UA status, you were

in the hands of civilian authorities from 13 November 1981 to 25 March 1982. On 28 April 1982, you submitted a written request for discharge for the good of the service to avoid trial by court-martial for the 4 March 1981 to 25 March 1982 UA period. Prior to submitting this request, you consulted 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. After the Staff Judge Advocate determined your request was sufficient in law and fact, your request was granted, and your Commanding Officer was directed to issue an other than honorable discharge for the good of the service. As a result of this action, you were spared the stigma of a court-martial conviction, as well as the potential penalties of such a punitive discharge. On 18 May 1982, you were discharged.

Your request for a change to your characterization of service was reviewed in consideration of your contention you were suffering from Post-Traumatic Stress Disorder (PTSD) at the time of your misconduct. Your request was fully and carefully considered by the Board in light of the Secretary of Defense's 3 September 2014 memorandum, "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requested by Veterans Claiming Post Traumatic Stress Disorder," of the 25 August 2017 memorandum "Clarifying Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment," and the 25 July 2018 memorandum, "Guidance to Military Discharge Review boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations."

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 24 September 2020. The AO states that you have not been diagnosed with PTSD. You were diagnosed with a mixed personality disorder on 16 January 1981 when evaluated by the █ Psychiatrist for progressive feelings of depression and anger but the remainder of your in-service records do not contain evidence of additional mental health symptoms or conditions. The AO further states that, in 2016, fully thirty-four years after discharge, you were diagnosed with Unspecified Trauma and Stressor Related Disorder but the limited clinical history associated with the diagnosis only mentioned trauma in relationship to a ten year period of incarceration you served, and did not specifically address a relationship to your military service or your in-service misconduct. Based on the available evidence, the mental health professional opined that there was insufficient evidence that you incurred PTSD as a result of your military service or that your misconduct can be attributed to your PTSD. The AO was provided to you on 25 September 2020. The Board considered your rebuttal to the AO and supporting documentation dated 24 October 2020.

The Board carefully reviewed your application, weighed all potentially mitigating factors, and considered your contention that you were suffering from PTSD as a result of your ship's transit through the Suez Canal. The Board considered the personal narrative you provided and reviewed your contentions through the lens of the 19-year-old Marine you were at the time of the transit. The Board also considered your contention that you did not receive proper attention or medical treatment for your "in-service trauma" but noted you were evaluated by the █ on 16 January 1981 and offered supportive individual and group

therapy. The Board considered your rebuttal contention that you were diagnosed without a “thorough investigation, and without evidence of a history of mental illness in my family, or consultation with my family doctor, or interviews with family members” but noted there is insufficient evidence to overcome the qualified psychiatrist’s diagnosis. Applying liberal consideration, the Board considered your personal statements throughout the years and your rebuttal statement, along with the documentation you submitted in support, but concurred with the AO’s conclusion that there is insufficient evidence that you incurred PTSD as a result of your military service. Even noting your PTSD screening, when reviewing your mental health records, the Board noted the mental health providers have not connected your mental health condition to your military service. Additionally, noting you did not provide new advocacy letters, the Board considered the advocacy letters from your past submission. Unfortunately, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service. Finally, the Board, noting you did not provide any documentation regarding post-service accomplishments, did not find evidence of an error or injustice that warrants granting clemency in the form of an upgraded characterization of service.

It is regretted that the circumstances of your reconsideration petition are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon the 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 the absence of new matters for reconsideration, the decision of the Board is final, and your only recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction. 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,

12/18/2020

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Executive Director

Signed by: █