



**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. 6049-23  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your deceased husband's naval record pursuant to Title 10, United States Code, Section 1552. After careful and conscientious consideration of relevant portions of his 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 Board waived the statute of limitation 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 15 March 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 the Board. Documentary material considered by the Board consisted of your application together with all material submitted in support thereof, relevant portions of your husband's naval record, and applicable statutes, regulations, and policies, to include to 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). The Board also considered the advisory opinion (AO) of a qualified mental health provider and your response to the AO.

Your husband enlisted in the Marine Corps with a pre-service history of violation of a liquor ordinance and contributing to the delinquency of a minor, and he began a period of active duty on 28 February 1968. He deployed to the Republic of Vietnam, on 26 August 1968, to participate in combat operations in support of the Vietnam War. On 14 November 1968, he was wounded in action by shrapnel while on patrol and suffered injuries to his back and legs which required medical evacuation and hospitalization. On 21 November 1968, he was awarded the Purple Heart Medal (PHM) for the severity of his enemy-inflicted combat injuries. After returning to the United States and recovering from his injuries, your husband was discovered to have been driving while intoxicated on 4 January 1969. Then, on 7 April 1969, he

received a civil conviction for possession of marijuana. On 29 December 1969, he was convicted by Summary Court-Martial (SCM) for a violation of the Uniform Code of Military Justice (UCMJ) under Article 86 due to an unauthorized absence which began on 30 August 1969 and ended on 3 October 1969. He was the subject to nonjudicial punishment (NJP), on 8 April 1970, for violations of the UCMJ under Articles 113 and 134 due to sleeping on post and loitering on post.

Your husband was later convicted by General Court-Martial (GCM), on 1 September 1970, for a violation of Article 128 of the UCMJ after assaulting a private on 7 August 1970 by stabbing him approximately 13 times in the chest, back, and arms with a knife, thereby intentionally inflicting grievous bodily harm upon him, to include a collapsed lung in addition to deep cuts. His GCM sentence included one year of confinement at hard labor and a Bad Conduct Discharge. The legal review of his case addressed consideration of mitigating factors to include his combat history as well as his receipt of the PHM due to his combat injuries, it also included extensive discussion of the witness testimony regarding the offense to include that, although the victim was not choking your husband, he had him in a head-lock “so he [your husband] just decided to use his knife” and, although “he thinks he stabbed him only three or four times he probably stabbed him thirteen times.” In taking action on his sentence, the Convening Authority also included a detailed summary of the events which led up to his offense. His requests for further appellate review and for clemency were denied, and he was discharged, on 18 June 1971, upon the execution of his punitive discharge.

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 upgrade your husband’s discharge to “Honorable” and your contentions that your husband’s experience of combat trauma, for which he was awarded the PHM, resulted in post-traumatic stress disorder (PTSD) and the misconduct. For purposes of clemency and equity consideration, the Board noted you submitted a copy of your marriage certificate and a personal statement outlining the symptoms and behaviors you observed in your husband as well as the impact of his PTSD.

Because you contend that PTSD or another mental health condition affected your discharge, the Board also considered the AO provided by a licensed clinical psychologist. The AO stated in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He did not submit any medical evidence in support of his claim. His personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct. Additional records (e.g., post-service mental health records describing the Petitioner’s diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The AO concluded, “it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition.”

In response to the AO, you submitted a personal statement providing additional information regarding the circumstances of your husband's case.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your husband's misconduct, as evidenced by his NJP, SCM, and GCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your husband's misconduct and found that his conduct showed a complete disregard for military authority and regulations. Although the Board found that the evidence of your husband's combat-related injuries, which resulted in his award of the PHM, was sufficient to conclude that he more likely than not suffered from combat-related trauma, the Board gave specific attention to the summary of the incident and testimony, as well as his acknowledgment of awareness that he was in being held in a head lock, he had a knife, and he chose to use it, notwithstanding that his memory appeared unclear as to the total number of times he stabbed the other Marine. Further, the Board concurred with the AO that there is insufficient evidence that his misconduct could be attributed to a mental health condition. As explained in the AO, your husband did not exhibit any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition and there was no medical evidence in support of your claim. Regardless, in light of the extreme and potentially life-threatening severity of his GCM offense, the Board concluded that the potentially favorable clemency factors you submitted for consideration are insufficient to outweigh his violent misconduct.

As a result, the Board concluded your husband's conduct constituted a significant departure from that expected of a service member and continues to warrant a BCD. 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 husband's 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 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 this regard, it is important to keep in mind that a presumption of regularity is attached 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,

4/1/2024

