



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

██████████  
Docket No. 6803-23

Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 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 29 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 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, which was previously provided to you. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

The Board determined that your personal appearance, with or without counsel, would not materially add to the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Marine Corps and began a period of active duty on 20 July 1973. You incurred three periods of unauthorized absence (UA) from 28 February 1974 to 9 March 1974,

12 March 1974 to 15 March 1974, and, 25 March 1974 to 1 April 1974. You were subject to nonjudicial punishment, on 2 April 1974, for the three specifications of violating Article 86 of the Uniform Code of Military Justice (UCMJ). You appealed your NJP; however, your appeal was denied on 10 April 1974.

By the time your appeal was denied, and in spite of the 30-day assignment to the Correctional Custody Unit, you had already commenced another period of UA. This UA continued from 8 April 1974 to 18 April 1974, and you again absented yourself, on 19 April 1974, and remained absent until the 22nd of that month, when you were apprehended and returned to military authority. On 12 June 1974, you received your second NJP for these two additional violations of Article 86 of the UCMJ, with additional punishment of 14 days restriction and extra duty.

Not long after you completed your period of restriction, you again absented yourself for four consecutive periods extending in total from 21 July 1974 until 5 October 1974. Your father submitted a request to his Congressman seeking assistance with your situation, to include proposing a change of occupational specialty to permit your assignment collocated with your older brother, whom he believed would provide a positive influence for you.

You were administratively counseled, on 7 November 1974, regarding your apathetic attitude toward the Marine Corps. Then, on 14 November 1974, you were subject to your third NJP for your extended periods of UA, after which you received a psychiatric evaluation. You were diagnosed with Immature Personality Disorder with significant passive dependent traits and a history of drug abuse. The mental health provider recommended that you be discharged for unsuitability.

On 10 December 1974, you were notified of the recommendation for your administrative discharge by reason of unfitness due to your frequent involvement of a discreditable nature with military and civil authorities. After consulting legal counsel, you elected to waive your right to a hearing before an administrative discharge board and did not submit a statement for consideration. The recommendation was forwarded for review and decision, and you were discharged, on 21 January 1975, with a total of 109 days of lost time due to your UA periods. Additionally, your average proficiency and conduct marks were below the 4.0 rating required for an Honorable characterization of service.

You received a mass clemency review from the Naval Discharge Review Board (NDRB) in 1976, then applied to this Board in 1977. You expressed your belief that you should have been discharged for your personality disorder as recommended by the psychiatrist. You then applied to the NDRB in 1979, expressing your desire to join the Merchant Marine and to become a better citizen but were prohibited from doing so due to your adverse discharge status. Your requests were all denied.

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 discharge to "Honorable" and change your narrative reason for separation to "Secretarial Authority" as well as your contentions that either post-traumatic stress disorder or a mental health condition

warrants liberal consideration and renders your discharge procedurally erroneous and inequitable. You describe a medical condition which involved water shooting out of your nose when you would take a drink and for which you purport to have been hospitalized for several weeks with no explanation of your symptoms, resulting in being placed into a “standby” situation potentially pending release from service. You assert that you believed you were being permitted to go home without realizing that you were being documented as absent. Additionally, you claim that you spent 30 days in jail due to vagrancy during one of your UA periods, your medical needs were neglected and your problems were brushed off by your command, you were presented with the option of a “General” discharge as a quick way home, you were formerly a member of the Marine Corps’ boxing team and have had symptoms of memory lapse with concerning behavioral patterns as well as an MRI scan that indicates a diagnosis of PTSD and frontal lobe damage, you reference potentially being impacted by the lawsuit involving contaminated water at Marine Corps Base, Camp Lejeune, North Carolina, during the time you were stationed there, and you state that you are a devoted family. For purposes of clemency and equity consideration, the Board noted you did not provide documentation describing post-service accomplishments or advocacy letters.

Because you contend that PTSD or another mental health condition affected the circumstances of your discharge, the Board also considered the AO provided by a licensed clinical psychologist, which noted that you had submitted post-service medical records from 2012 – 2013 which indicated:

... possible PTSD from combat in Vietnam; however, he did not deploy to Vietnam. 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. His personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct.

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.”

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. The Board determined that unexpectedly absenting yourself from your command placed an undue burden on your chain of command and fellow service members, and likely negatively impacted mission accomplishment. Further, the Board concurred with the conclusion of the AO that there is insufficient evidence of a mental health condition that may be attributed to military service or your misconduct. Additionally, the Board found insufficient evidence to substantiate your contentions regarding neglect of your purported in-service medical condition, your participation in Marine Corps boxing, your claimed belief that your absences were authorized, or the relevance of your contentions regarding the Camp Lejeune lawsuits.

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.

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,

4/19/2024

