



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. 416-24
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your late husband's (you and your late husband are hereinafter collectively referred to as "you" or "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 18 October 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 the advisory opinion (AO) furnished by a qualified mental health provider. Although you were provided an opportunity to respond to the AO, you chose not to do so.

Your late husband enlisted in the Navy and began a period of active duty service on 21 February 1963. His pre-enlistment physical examination, on 15 February 1963, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

On 1 September 1964, your late husband commenced a period of unauthorized absence (UA), and his command declared him to be a deserter. His UA terminated on 4 October 1964. On 6 October 1964, he received non-judicial punishment (NJP) his 33-day UA. He did not appeal his NJP.

On 20 December 1965, your late husband commenced another UA. His command declared him to be a deserter on 19 January 1966. His UA terminated after approximately on 9 March 1966 with his arrest by civilian authorities in Merrimack, New Hampshire, and return to military authorities on 10 March 1966.

On 24 March 1966, your late husband was convicted at a Special Court-Martial (SPCM) for his 80-day UA. He was sentenced to a reduction in rank to enlisted paygrade E-2, and confinement at hard labor for three (3) months. On 8 April 1966, the Convening Authority (CA) approved the sentence as adjudged. However, on 24 May 1966, the CA subsequently suspended all unexecuted confinement.

On 5 June 1966, your late husband commenced another UA. His UA terminated on 2 July 1966. On 5 July 1966, your late husband commenced yet another UA. His UA terminated on 21 July 1966.

On 30 August 1966, your late husband was convicted at a second SPCM for his 27-day and 16-day UAs. He was sentenced to a reduction in rank to the lowest enlisted paygrade (E-1), confinement for three (3) months, forfeitures of pay, and to be discharged from the Marine Corps with a Bad Conduct Discharge (BCD). On 23 September 1966, the CA approved the sentence as adjudged.

On 10 October 1966, your late husband underwent a psychiatric evaluation. The Navy Medical Officer (MO) determined there was no evidence of psychosis, and that he did not have any disqualifying physical defects. The MO diagnosed him with a personality disorder, passive-dependent, mild.

On 24 October 1966, your late husband waived his right to request restoration to duty, and instead requested the execution of his punitive discharge. On 26 October 1966, the Naval Clemency and Parole Board unanimously recommended that no clemency be granted.

On 18 November 1966, your late husband commenced another long-term UA. His command declared him to be a deserter on 19 December 1966. His UA terminated on 6 February 1967. On 23 February 1967, he received NJP for his 80-day UA. Upon the completion of SPCM appellate review in his case, on 8 March 1967, your late husband was discharged from the Marine Corps with a BCD and was assigned an RE-4 reentry code.

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 contentions that: (a) your late husband struggled with PTSD, and (b) an honorable discharge is required to receive and aid and attendance benefit. For purposes of clemency and equity

consideration, the Board considered the totality of the evidence you provided in support of your application.

A licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records, and issued an AO dated 4 June 2024. As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service. Although it is documented by at least two Navy personnel that his misconduct was related to multiple family stressors, medical personnel documented that they felt his UA was a result of Dependent Personality Disorder rather than any mental health condition. Furthermore, there is no evidence of any PTSD symptoms that might have mitigated the Petitioner's misconduct while in service.

The Ph.D. concluded, "it is my considered clinical opinion there is insufficient evidence of a mental health condition that was diagnosed during 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. In accordance with the Hagel, Kurta, and Wilkie Memos, the Board gave liberal and special consideration to your late husband's record of service and your contentions about any traumatic or stressful events he experienced and their possible adverse impact on his service. However, the Board concluded that there was no convincing evidence of any nexus between any mental health conditions and/or related symptoms and your late husband's 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 his discharge. As a result, the Board concluded that your late husband's misconduct was not due to mental health-related conditions or symptoms. Moreover, even if the Board assumed that your late husband's misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of his misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that your late husband's misconduct was intentional and willful and demonstrated he was unfit for further service. The Board also determined that the evidence of record did not demonstrate that he was not mentally responsible for his conduct or that he should not be held accountable for his actions.

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 your late husband was properly convicted at a SPCM of serious misconduct. The Board determined that characterization with a BCD appropriate when the basis for discharge is the commission of an act or acts constituting a significant departure from the conduct expected of a Marine. The simple fact remains is that your late husband left the Marine Corps while he was still contractually obligated to serve and went into a UA status without any legal justification or excuse on no less than five (5) separate occasions for a total of approximately 236 days.

Moreover, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans-related benefits, or enhancing educational or employment opportunities.

As a result, the Board determined that there was no impropriety or inequity in the discharge and concluded that the cumulative misconduct and disregard for good order in discipline clearly merited the punitive 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 the cumulative misconduct. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

The Board sincerely expresses their condolences for your loss.

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 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,

11/6/2024

