



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

██████████
Docket No. 2931-24
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application 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 18 September 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, 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)/mental health condition (MHC) (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). In addition, the Board considered an advisory opinion (AO) from a qualified mental health professional. Although you were provided an opportunity to respond to the AO, you chose not to do so.

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.

You enlisted in the U.S. Marine Corps and began a period of active duty on 9 April 1973. On

17 May 1973, you received non-judicial punishment (NJP), for assault on another Marine. You received a second NJP, on 7 November 1973, for aggravated assault and drunk and disorderly conduct in public. On 8 March 1974, you received your third NJP for failure to obey a lawful order, two specifications of disrespectful in language, and possession of a bayonet. On 13 March 1974, you received your fourth NJP for deflection of duties, failure to obey a lawful general order, two specifications of failure to obey a lawful order, and absence from your appointed place of duty. On 24 March 1974, you received a fourth NJP for two specifications of failure to obey a lawful order.

On 25 March 1974, you were found guilty at summary court-martial (SCM) for two specifications of unauthorized absence (UA) for duty section muster, disrespectful language, disobedience of a lawful order, and wrongful communicating to a superior noncommissioned officer. You were sentence to confinement and forfeiture of pay. You were found guilty at special court-martial (SPCM) on 23 October 1974, for 91 days UA and disobey an order. You were sentenced to confinement and forfeiture of pay.

As a result, you were notified for separation for frequent involvement with military authorities and elected an administrative discharge board (ADB). The ADB met on 20 March 1975 and recommended your discharge with an Other Than Honorable (OTH) characterization of service. Your Commanding Officer forwarded the ADB's recommendation to the Separation Authority (SA). The SA accepted the recommendation and directed you be discharged. You were so discharged on 30 April 1975.

Post-discharge, you twice applied to the Naval Discharge Review Board (NDRB) for relief. The NDRB denied your requests, on 29 April 1976 and on 2 April 1980, after determining your discharge was proper as issued.

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 for a discharge upgrade because of Camp Lejeune medical related problems that you acquired after leaving active duty and traumatic incidents during you experienced during your service. For purposes of clemency and equity consideration, the Board noted you provided medical documents and your DD Form 214 but did not provide supporting documentation describing post-service accomplishments or advocacy letters.

As part of the Board review process, a licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records, and issued an AO dated 2 August 2024. The Ph.D. stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. The absence of formal mental health diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. He has received treatment of mental health concerns that are temporally remote to his military service and appear unrelated.

Unfortunately, there is insufficient evidence to attribute his misconduct to mental health concerns, particularly given his chronic misbehavior that began prior to his purported stressors. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The Ph.D. concluded, "it is my clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct 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, SCM and SPCM, 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. Additionally, the Board observed that you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct. Further, the Board concurred with the AO and determined there was insufficient evidence to attribute your misconduct to a mental health condition. As explained in the AO, you received treatment of mental health concerns that are temporally remote to your military service and appear unrelated. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits or enhancing educational or employment opportunities.

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. 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.

Regarding your assertion concerning exposure to contaminated water at Camp Lejeune, Public Law 112-154, Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012, requires the Veterans Administration to provide health care to Veterans with one or more of 15 specified illnesses or conditions. You should contact the nearest office of the Department of Veterans Affairs (DVA) concerning your right to apply for benefits or appeal an earlier unfavorable determination.

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,

10/3/2024

