



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. 3489-24

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 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 an advisory opinion (AO) furnished by qualified mental health provider. Although you were provided an opportunity to respond to the AO, you chose not to do so.

You enlisted in the U.S. Marine Corps and began a period of active duty service on 18 April 1967. Your pre-enlistment physical examination, on 26 July 1965, and self-reported medical history both noted no psychiatric or neurologic issues, history, or symptoms.

On 2 October 1967, you commenced a period of unauthorized absence (UA) that terminated with your surrender to military authorities at or near Detroit, Michigan on 25 October 1967. On 30 October 1967, you received non-judicial punishment (NJP) for your 23-day UA. You did not appeal your NJP.

On 14 August 1968, pursuant to your guilty plea, you were convicted at a General Court-Martial (GCM) of the wrongful possession of a controlled substance (approx. 7.4 grams of marijuana (THC)) in Barracks #30. You were sentenced to confinement at hard labor for two (2) years, total forfeitures of pay, a reduction in rank to the lowest enlisted paygrade (E-1), and to be discharged from the Marine Corps with a bad conduct discharge (BCD).

On 29 September 1968, the Convening Authority (CA) initially approved only so much of the GCM sentence as provided for confinement at hard labor for one year, total forfeitures, reduction in rank to E-1, and a BCD. However, the CA then suspended the BCD, forfeitures of pay in excess of six (6) months, and confinement in excess of six (6) months. On 31 October 1968, the U.S. Navy Board of Review affirmed the GCM findings and sentence as approved on review.

On 29 November 1968, your command notified you of administrative separation proceedings by reason of unfitness on the basis of unauthorized use or possession of marijuana. You waived your rights to consult with counsel, submit statements, and to elect a hearing before an administrative separation board.

On 30 November 1968, your commanding officer recommended to the Separation Authority (SA) that you receive an under Other Than Honorable conditions (OTH) characterization of service. On 11 February 1969, the Staff Judge Advocate to the SA recommended your separation with an undesirable discharge by reason of unfitness. Ultimately, on 5 June 1969, you were separated from the Marine Corps for misconduct with an undesirable OTH discharge characterization and were assigned an RE-4 reentry code. However, on 16 July 1973, the Naval Discharge Review Board upgraded your discharge characterization to General (Under Honorable Conditions) (“GEN”).

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 and contentions that: (a) you have PTSD related to combat in ██████████ (b) you smoked pot one time due to stress and mental breakdown, and (c) you were young and you have never done it again. 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 28 August 2024. As part of the Board’s review, the Board considered the AO. The AO stated in pertinent part:

The Petitioner submitted a letter from a psychiatrist dated April 2024 that indicates that he has been “followed up in this MHC since April 2018 for the diagnosis of Post-Traumatic Stress Disorder related to combat in ██████████. There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, or that he exhibited any symptoms of a mental health condition. Neither his statement, nor the letter from the psychiatrist are sufficiently detailed to provide a nexus with his misconduct.

The Ph.D. concluded, “it is my considered clinical opinion there is sufficient evidence of a post-service mental health condition that is temporally remote to 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 record of service and your contentions about any traumatic or stressful events you experienced and their possible adverse impact on your 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 misconduct and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to mental health-related conditions or symptoms. Even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your cumulative misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that your misconduct was intentional and willful, and demonstrated you were unfit for further service. The Board also determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not be held accountable for your actions.

The Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average calculated from your available performance evaluations during your enlistment was approximately 2.85 in conduct. Marine Corps regulations in place at the time of your discharge recommended a minimum trait average of 4.0 in conduct (proper military behavior), for a fully honorable characterization of service. The Board concluded that your cumulative misconduct was not minor in nature and that your conduct marks during your active duty career were a direct result of your serious misconduct and a failure to conform to basic military standards of good order and discipline, all of which further justified your OTH characterization.

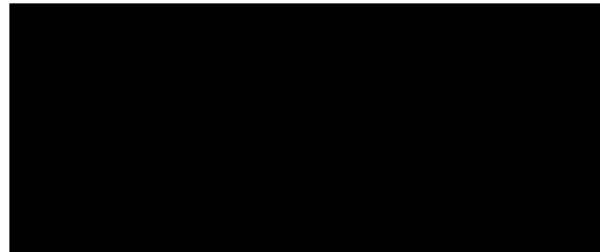
The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Marine. The Board determined that illegal drug use and/or possession by a Marine is contrary to Marine Corps core values and policy, renders such Marines unfit for duty, and poses an unnecessary risk to the safety of their fellow Marines. The Board noted that marijuana use or possession in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. The Board also noted that you left the Marine Corps while you were still contractually obligated to serve and you went into a UA status without any legal justification or excuse on one occasion in October 1967 for twenty-three (23) days.

As a result, the Board determined that there was no impropriety or inequity in your discharge and concluded that your misconduct and disregard for good order in discipline clearly merited your discharge¹. 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 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



¹ While the Board acknowledged that you were granted an upgrade to your characterization of service from OTH to General (Under Honorable Conditions), the Board determined your misconduct still supports the original OTH characterization you were assigned.