



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. 4209-24
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your spouse's naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your spouse's 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 limitations 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 30 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)/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). The Board also considered an advisory opinion (AO) from a qualified mental health professional, dated 22 August 2024. 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.

Your spouse enlisted in the Marine Corps and commenced a period of active duty on 29 January 1963. On 23 April 1964, a special court-martial (SPCM) convicted him of two specifications of

unauthorized absence (UA) totaling 48 days and breaking restriction. On 4 September 1964, a SPCM convicted him of UA totaling 61 days. On 7 September 1966, a SPCM convicted him of two specifications of UA totaling 97 days. On 14 March 1967, civil authorities convicted him of two counts of written bad checks, two counts of grand theft auto, and driving a vehicle without the owner's permission. On 16 May 1967, a SPCM convicted him of two specifications of UA totaling 175 days. As a result, he was sentenced to confinement, reduction to E-1, forfeiture of pay, and a Bad Conduct Discharge (BCD). After completion of all levels of review, he was so discharged on 8 September 1967.

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 spouse's discharge and contentions that your spouse incurred mental health concerns (PTSD) that contributed to his separation from the Marine Corps due to serving in Vietnam, the Marine Corps did not address his PTSD, and other service members with a BCD eventually received an Honorable discharge. For purposes of clemency and equity consideration, the Board considered the statement you provided in support of your application.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO. The mental health professional stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition, as he had periods of UA before and after deployment. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. He has provided no medical evidence in support of his claims. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct. Additional records (e.g., records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to a PTSD or another mental health condition."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your spouse's misconduct, as evidenced by his SPCMs and civil conviction, outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness of his misconduct and the likely negative impact his conduct had on the good order and discipline of his command. Additionally, unexpectedly absenting himself from his command placed an undue burden on his chain of command and fellow service members, and likely negatively impacted mission accomplishment. Further, the Board concurred with the AO that there is insufficient evidence to attribute your spouse's misconduct to PTSD or another mental health condition. As explained in the AO, there is no evidence that he was diagnosed with a mental health condition in military service, or that he

exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition, as he had periods of UA before and after deployment. Furthermore, the Board observed that you failed to submit any medical evidence in support of your claim. Finally, the Board noted that there is no evidence in his record, and you submitted none, to substantiate your contention that other Marines with a BCD eventually received Honorable discharges.

As a result, the Board concluded your spouse'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 statement you provided 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 spouse'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 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,

11/20/2024

