



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

█  
Docket No. 5052-24  
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 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 20 November 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 10 September 2024. Although you were provided an opportunity to comment on the AO, you chose not to do so.

You entered active duty in the Marine Corps on 10 June 1976. On 17 August 1976, you received non-judicial punishment (NJP) for disobeying a lawful order. On 18 April 1978, you received NJP for unauthorized absence (UA) totaling 17 hours and 31 minutes. On 8 February 1979, you received NJP for sleeping on post and violating a written order. On 7 August 1979, you received NJP for willfully disobeying a lawful order from a non-commission officer (NCO), communicating a threat to an NCO, failure to be at appointed place of duty, and failure to obey a lawful general order.

On 27 November 1979, a summary court-martial (SCM) convicted you of two specifications of larceny of property belonging to another Marine and unlawfully entering the room of another Marine with intent to commit larceny. On 10 January 1980, you received NJP for absence from appointed place of duty. On 12 June 1980, you were released from active duty and received a General (Under Honorable Conditions) (GEN) characterization of service. Your final conduct mark was 3.7 at discharge.

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 and contentions that you incurred a mental health condition during military service, were told your discharge would be upgraded to Honorable after six months, and 40 years has passed since discharge. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

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 the Petitioner was diagnosed with a mental health condition while in military service, or that he exhibited any symptoms of a mental health condition. His statement is not sufficiently detailed to provide a nexus with his misconduct. He did not submit any medical evidence in support of his claim. Additional records (e.g., mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

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 and SCM, outweighed these mitigating factors. In making this finding, the Board considered the likely negative impact your conduct had on the good order and discipline of your command. The Board also concurred with the AO that there is insufficient evidence your misconduct could be attributed a mental health condition. As explained in the AO, there is no evidence that you were diagnosed with a mental health condition while in military service, or that you exhibited any symptoms of a mental health condition. Therefore, the Board 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 also noted that at the completion of your required active service, you were assigned a characterization of service warranted by your service record. Based on your assigned conduct average of 3.7, you did not qualify for an Honorable characterization of service. Finally, the Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows a discharge to be automatically upgraded after a specified number of months or years.

As a result, the Board concluded significant negative aspects of your active service outweigh the positive aspects and continues to warrant a GEN characterization of service. 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. 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,

12/17/2024

