



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

[REDACTED]
Docket No. 6307-24

Ref: Signature Date

[REDACTED]
[REDACTED]
[REDACTED]

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 13 December 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 Reserve (USMCR) and began a period of active duty service on 10 August 1972. Your enlistment physical examination, on 5 January 1972, and self-reported medical history both noted no neurologic or psychiatric conditions or symptoms. While in boot camp you received non-judicial punishment (NJP) for insubordinate conduct. You did not appeal your NJP. Following the completion of your initial required active duty service, you were assigned to a USMCR unit drilling in [REDACTED], [REDACTED], very close to your home of record upon your enlistment.

On 21 July 1973, your command issued you a "Page 11" counseling warning for your unsatisfactory drill attendance and/or participation. The Page 11 informed you that any additional unsatisfactory attendance and/or participation will result in your being recommended for involuntary active duty.

In December 1973, you pleaded guilty to robbery in a civilian court and were sentenced to serve 9 to 48 months of confinement.

On 28 June 1974, your command notified you of administrative separation procedures by reason of misconduct due to your frequent involvement with civil authorities. On 2 July 1974, you elected to present your case at a hearing before an administrative separation board (Adsep Board).

On 13 July 1974, an Adsep Board convened in your case. At the hearing you were represented by counsel. Following the presentation of evidence and any witness testimony, the Adsep Board members noted your robbery conviction and recommended that you be separated with an undesirable discharge by reason of misconduct (frequent involvement with civil authorities).

On 4 September 1974, the Staff Judge Advocate to the Separation Authority determined your separation proceedings were legally and factually sufficient. Ultimately, on 5 November 1974, you were separated from the USMCR for misconduct with an undesirable (OTH) discharge characterization.

On 12 June 1986, the Naval Discharge Review Board (NDRB) denied your initial discharge upgrade application. The NDRB's rationale to deny relief, in part, included the following:

Review of the applicant's service record in its entirety shows that while in recruit training he received a nonjudicial punishment for disobedience of a lawful order. Upon completion of his individual active duty for training, he was released from active duty with that period of service being characterized as honorable. He completed one drill weekend in February 1983 and never made another drill afterwards. The record shows numerous notices of unsatisfactory drill performance and the possibility of orders to involuntary active duty. His police record from March through August 1983 shows six arrests, one for robbery, assault and battery, and in general, disorderly conduct. The applicant was processed for administrative separation, but it was disapproved based on administrative errors and irregularities. The discharge process was initiated again for discharge under other than honorable conditions for misconduct due to frequent involvement of a discreditable nature with civil authorities. In December 1983, the applicant pleaded guilty to robbery and was convicted and sentenced to 9 to 48 months confinement. The civil conviction of robbery meets the criteria for discharge under other than honorable conditions for misconduct and is proper and equitable.

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 are requesting that the Department of Defense (DoD) classify your honorable discharge from active duty for training as “veteran status” for compensation/disability purposes due to the fact of the DoD’s 180-day rule which initiates veteran status, (b) you are asking for a correction to your discharge because you have been denied for Camp Lejeune water contamination for two years, (c) your denial letter states that you have received a dishonorable discharge which is not true, (d) you are asking to have military reservist and national guardsmen be considered veterans for purposes of your Camp Lejeune claim, and (e) you have four diseases resulting from Camp Lejeune water contamination. For purposes of clemency and equity consideration, the Board considered the entirety 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 24 October 2024. As part of the Board’s review, the Board considered the AO. The AO 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. 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, his personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct.

The Ph.D. concluded, “it is my clinical opinion that 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.

First and foremost, the Board denied your request to reclassify a discharge or your military affiliation to potentially qualify for “veteran status” for VA compensation or disability purposes. The Board does not have the statutory authority to make such changes or grant policy exceptions for certain programs administered by other federal agencies.

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 that you suffered from any type of mental health condition while on active duty, or that any such mental health condition was related to or 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. Additionally, 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.

Regarding your contention you suffered from the effects of tainted water while stationed at ██████████, the Board noted that if you indeed experienced any health-related issues due to contaminated ██████████ water, you might not be prohibited from receiving VA benefits due to your OTH administrative discharge. As long as you did not receive a dishonorable discharge and meet certain qualifying criteria, you are *potentially* eligible to receive certain VA benefits related to tainted water at ██████████.¹

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 1.5 (out of a possible 5.0) 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 misconduct coupled with your unsatisfactory participation in your weekend drill responsibilities was not minor in nature, and that your conduct marks during your brief USMCR career were a direct result of your serious misconduct and failure to conform to basic military standards of good order and discipline, all of which further justified your undesirable 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. Moreover, 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 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 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 your misconduct. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

¹ <https://www.va.gov/disability/eligibility/hazardous-materials-exposure/camp-lejeune-water-contamination/>

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,

1/9/2025

