



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

Docket No. 7099-24
Ref: Signature Date

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 15 January 2025. 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional and your response to the AO.

You enlisted in the Marine Corps and began a period of active duty on 9 July 1979. On 12 March 1980, you received non-judicial punishment (NJP) for absence from your appointed place of duty and sleeping on post.

Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file. Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Based on the information contained on your Certificate of Release or Discharge from Active Duty (DD Form 214), you were separated from the Marine Corps, on 6 May 1980, with an “Under Honorable

Conditions (GEN)” characterization of service, your narrative reason for separation is “Physical Disability w/o Severance Pay (Existed Prior to Enlistment),” your reenlistment code is “RE-3P,” and your separation code is “JFN3;” which corresponds to physical disability without severance pay.

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 character of service and contentions that: (1) you have made substantial progress with your emotional and mental health condition over the past several years, (2) you were given a medical waiver prior to your enlistment into the Marine Corps; your mental health issues were well known, (3) there was no professional help available or administered during your period of service at ■ to address your specific needs, (4) since that period, you have been under professional treatment and have responded positively to that treatment; you have become more confident and engaging generally in your dealings with life, and (5) you feel that an elevation to a Honorable character of service is appropriate in your case. For purposes of clemency and equity consideration, the Board noted you provided a personal statement and a letter from a psychiatrist but no supporting documentation describing post-service accomplishments or advocacy letters.

As part of the Board’s review, a qualified mental health professional reviewed your contentions and the available records and provided the Board with an AO on 22 November 2024. The AO stated in pertinent part:

The Petitioner’s available service record is sparse and there are no mental health records contained therein for review. There is no evidence that the Petitioner was diagnosed with a mental health condition during his military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a mental health condition. He has provided a letter from a psychiatrist noting treatment for Schizophrenia, however this as well as his personal statement are not sufficiently detailed to establish clinical symptoms or provide a nexus with his requested change for narrative reason for separation. Additional records (e.g., active duty medical records, post-service mental health records describing the Petitioner’s diagnosis, symptoms, and their specific link to his separation) would aid in rendering an alternate opinion.

The AO 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.”

In response to the AO, you provided an additional statement in support of your case. After reviewing your rebuttal evidence, the AO remained unchanged.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the negative impact your conduct likely had on the good

order and discipline of your command. Further, the Board concurred with the AO that there is insufficient evidence of a mental health condition that may be attributed to military service and there is insufficient evidence to attribute your misconduct to a mental health condition. As the AO explained, the letter from your psychiatrist and your personal statement are not sufficiently detailed to establish clinical symptoms. Further, the Board agreed there is no evidence that you were diagnosed with a mental health condition during your military service or that you exhibited any psychological symptoms or behavioral changes indicative 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 otherwise not be held accountable for your actions.

Finally, 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 3.9 in conduct/military behavior. Marine Corps regulations in place at the time of your discharge recommended a minimum trait average of 4.0 in conduct/military behavior, for a fully Honorable characterization of service; a minimum mark you failed to achieve.

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

2/7/2025

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Executive Director

Signed by: ■