



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. 7862-24
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 10 February 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. 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.

You enlisted in the Marine Corps and commenced active duty on 11 September 1970. On 25 June 1971, you received non-judicial punishment (NJP) for unauthorized absence (UA) and failure to obey a lawful order from a Staff Sergeant. On 19 October 1971, you received NJP for false official statement. On 9 May 1992, you received NJP for violating a lawful order. On

8 June 1972, you were removed from the Reliability Program for cause. At the completion of your required active duty obligation, you were discharged with a General (Under Honorable Conditions) characterization of service on 10 September 1972.

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 change your discharge characterization of service and your contentions that you have a 50% service-connected disability for PTSD, are “in hopes of 70%,” that you were found not guilty at General court-martial, and have become a productive member of society. For purposes of clemency and equity consideration, the Board considered your statement, doctor’s note, Department of Veterans Affairs (VA) decision letter, article, and advocacy letters you provided.

As part of the Board’s review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 30 December 2024. The AO stated in pertinent part:

Petitioner contends he incurred mental health issues (PTSD) during military service, which may have contributed to the circumstances of his separation from service.

Petitioner submitted two-character letters from his father and wife (January 1977) that were written on his behalf explaining a “nerve problem” for which he was prescribed Valium. He submitted a letter from a physician dated January 1977 noting he [Petitioner] had once been treated for “hyperventilation syndrome.” He submitted post-service accomplishments and VA compensation and pension rating noting 50% service-connection for PTSD “with major depressive disorder.”

There is no evidence (contained within his record) 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. Based on letters written on his behalf in 1977 and in documentation indicating that he believes he was treated for a “nerve problem” while in service, it is possible that he suffered from anxiety symptoms while in service. However, there are no medical records noting as such in his available service file. There is also no timeline with which to compare a possible anxiety problem to his misconduct in order to note a possible nexus between the two. He has provided post-service evidence of a diagnosis of PTSD, however there is also no indication of any trauma experienced while in service. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his requested change for narrative reason for separation.

The AO concluded, “it is my clinical opinion that there is sufficient evidence of a post-service mental health condition that may be attributed to military service. There is evidence that the Petitioner likely suffered from anxiety symptoms while in service. There is insufficient evidence to attribute his misconduct to a mental health condition.”

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 NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact your repeated misconduct had on the good order and discipline of your command. The Board noted that you were given multiple opportunities to address your conduct issues, but you continued to commit misconduct; which led to conduct marks that were insufficient for an Honorable discharge. Additionally, the Board concurred with the AO and determined that, while there is sufficient evidence of a post-service mental health condition that may be attributed to military service and evidence that you likely suffered from anxiety symptoms while in service, there is insufficient evidence to attribute your misconduct to a mental health condition. As explained in the AO, there is also no timeline with which to compare a possible anxiety problem to your misconduct in order to note a possible nexus between the two. 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.

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 and discipline clearly merited your discharge. While the Board carefully considered the evidence you submitted in mitigation and commends you for your post-service accomplishments, 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,

3/7/2025

