



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

██████████
Docket No. 8852-24
Ref: Signature Date

██████████
██████████
██████████

Dear Petitioner:

This is in reference to your application for correction of your husband's naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of his 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 19 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 the Board. Documentary material considered by the Board consisted of your application together with all material submitted in support thereof, relevant portions of your husband's naval record, 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). In addition, the Board considered an advisory opinion (AO) from a qualified mental health professional. Although you were provided an opportunity to respond to the AO, you chose not to do so.

Your husband enlisted in the U.S. Marine Corps with a waiver for two instances of burglary, two instances of fighting, disturbing the peace, assault, and grand larceny. He began a period of active duty on 30 April 1970. On 10 August 1971, your husband received non-judicial punishment (NJP) for assault on a lance corporal, disrespectful in language toward a superior non-commission officer (NCO) and failure to go to his appointed place of duty. He deployed onboard ██████████ December 1971 until July 1972 and participated operations in the contiguous waters of North Vietnam. On 4 October 1972, your husband

received his second NJP for a 47 day unauthorized absence (UA), willfully disobeying an order issued by a sergeant, and disrespectful language toward a superior NCO.

On 18 October 1972, your husband was convicted by civil authorities for public drunkenness and assault on an officer. On 30 December 1972, your husband was arrested by civil authorities for possession with intent to distribute marijuana. On 12 January 1973, he was found guilty at summary court-martial (SCM) for three specifications of disobedience of a lawful order. Your husband was sentence to confinement and reduction in rank. On 9 March 1973, your husband was convicted by a civilian court for possession with intent to distribute marijuana.

Consequently, your husband was notified of administrative separation processing for civilian conviction. Your husband elected his right to consult with counsel but waived his right to an administrative board. The Commanding Officer (CO) made his recommendation to the Separation Authority (SA) that he be discharged with an Other Than Honorable (OTH) characterization. The SA accepted the recommendation and he was so discharged on 18 May 1973.

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 to qualify for veterans' benefits and contentions that your husband was suffering from PTSD from the Vietnam War and all his trouble started after coming back from the war. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

As part of the Board review process, a licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records, and issued an AO. The Ph.D. 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 or indicative of a diagnosable mental health condition. While his misconduct could be considered behavioral indicators of avoidance and irritability associated with PTSD, it is difficult to attribute the Petitioner's behavior to PTSD given pre-service behavior that appears to have continued in service, both before and after his deployment. The Petitioner's family has provided no medical evidence to support their claims. Unfortunately, available records are 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 diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your husband's misconduct, as evidenced by his NJPs, SCM, and civilian convictions, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of his misconduct and found that his

conduct showed a complete disregard for military authority and regulations. The Board also considered the likely discrediting effect your husband's civil convictions had on the Marine Corps. The Board observed your husband was given multiple opportunities to correct his conduct deficiencies but chose to continue to commit misconduct; which led to his OTH discharge. His conduct not only showed a pattern of misconduct but was sufficiently pervasive and serious to negatively affect the good order and discipline of his command. Further, the Board concurred with the AO and determined there is insufficient evidence to attribute his misconduct to PTSD. As explained in the AO, while his misconduct could be considered behavioral indicators of avoidance and irritability associated with PTSD, it is difficult to attribute the your husband's behavior to PTSD given his extensive pre-service misconduct that appears to have continued in service; both before and after his deployment. Therefore, the Board determined that the evidence of record did not demonstrate that he was not mentally responsible for his conduct or that he should not be held accountable for his actions. Finally, 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 and discipline clearly merited your discharge. While the Board carefully considered the evidence you submitted in mitigation, even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants granting 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 husband's misconduct. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

Notwithstanding the Board's decision in your case, it expressed its deepest condolences for your loss.

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,

3/13/2025
