



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

Docket No. 10810-24
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 26 March 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 that was considered favorable to your case.

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 began a period of active duty on 8 February 1974. On 15 December 1974, you received non-judicial punishment (NJP) for a period of unauthorized absence (UA) totaling five days. As punishment, you were awarded 14 days correctional

custody and forfeiture of \$100 pay per month for one month. You submitted an appeal of your NJP. The appeal returned with the decision that you did not commit the offense of UA but did in fact commit the offense of failure to go at the time prescribed to your appointed place of duty. The [original] specification was disapproved and dismissed, and the punishment awarded was reassessed. Upon reassessment, only so much of the awarded punishment as provided for the forfeiture of \$100.00 per month for one month was approved. On 22 January 1976, you commenced a period of UA that concluded upon your surrender to military authorities; a period totaling four days.

On 14 April 1976, you were admitted to Naval Regional Medical Center for psychiatric treatment with a diagnosis of paranoid schizophrenia. On 20 April 1976, a final diagnosis of paranoid schizophrenia was established. On 17 May 1976, a medical board agreed with the diagnosis, determined that you were unfit for further service, and recommended that your case be referred to a Physical Evaluation Board (PEB). On 28 June 1976, the PEB determined you were unfit for continued service due to physical disability. Furthermore, during this period, you were apprehended by civilian authorities for "larceny of aircraft."

On 14 December 1976, you were found guilty by civilian authorities of misuse of aircraft. Following your sentencing, you were returned to military control and admitted to medical center for psychiatric treatment and evaluation. On 16 December 1976, your commanding officer noted all military charges against you were withdrawn due to your psychiatric evaluation. On 11 January 1977, you commenced a period of UA that concluded upon your return to military authorities on 15 February 1977; a period totaling 35 days.

Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). 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 Report of Separation from Active Duty (DD Form 214), you were separated from the Marine Corps, on 11 March 1977, with an "Under Honorable Conditions" (GEN) characterization of service, reenlistment code of "RE-4," and separation code of "JKA1;" which corresponds to misconduct - frequent involvement (without administrative discharge board).

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 were falsely imprisoned because you stated the "water was poisoned at Camp Lejeune," (2) the military leadership did not want you questioning the drinking water, (3) military leadership directed a medical team to examine you and erroneously diagnosed you with acute schizophrenia paranoia, and (4) the PACT Act shows that you were right to state your concerns about the "poisonous drinking water." You assert you have lived a great life since your enlistment, have been married for 37 years, and have children who are successful in life. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

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 26 February 2025. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated during two inpatient hospitalizations. His mental health diagnosis was based on the psychological evaluations performed and deemed disabling. Unfortunately, the Petitioner's repeated UA interfered with his ability to receive a medical discharge. While it appears that his misconduct is related to his mental health concerns, it also appears that his mental health concerns were considered during his processing for discharge.

The AO concluded, "There is in-service evidence of mental health concerns that may be attributed to military service. There is in-service evidence to attribute his misconduct to mental health concerns."

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evident by your NJP, civilian conviction, and periods of UA, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded your misconduct showed a complete disregard for military authority and regulations. The Board observed you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct; which led to your GEN discharge. Your conduct not only showed a pattern of misconduct but was sufficiently pervasive and serious to negatively affect the good order and discipline of your command. While the Board considered the findings of the AO, the Board unequivocally concluded that the severity of your misconduct far outweighed any and all mitigation offered by such mental health conditions. Finally, the Board noted that you already received a large measure of clemency when your command dropped pending charges against you due to your mental health condition and assigned you a GEN characterization of service despite your extensive record of serious misconduct.

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 3.3 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 was not minor in nature and that your conduct marks during your active duty career were a direct result of your serious misconduct and a failure to conform to basic military standards of good order and discipline, all of which further justified your GEN characterization.

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 Kurta, Hagel, and Wilkie Memo 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,

4/10/2025

