



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

Docket No. 0846-25
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 9 June 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, 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). 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.

You enlisted in the Marine Corps and commenced active duty on 24 January 1974. On 26 July 1974, you commenced a period of unauthorized absence (UA) that ended in your surrender on 6 August 1974. On 7 August 1974, you received non-judicial punishment (NJP) for the eleven days of UA. On 2 December 1974, you commenced a period of UA that ended in your surrender on 9 December 1974. On 13 December 1974, you received NJP for the seven days of UA. On 16 January 1975, you received NJP for UA from your appointed place of duty on 11 January 1975. On 12 July 1975, you commenced a period of UA that ended in your surrender on 7 October 1975.

Upon your return, you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for the period of UA. Prior to submitting this request, you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. Your request was granted; your commanding officer was directed to issue you an under Other Than Honorable conditions (OTH) discharge. On 5 December 1975, you were so discharged.

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 suffered from mental health issues, you committed UA to check on your younger siblings who were home with your alcoholic parents, and you require treatment for health issues from drinking water while stationed at ■■■■■. ■■■■■ For purposes of clemency and equity consideration, the Board considered the totality of your application; which included your DD Form 149, your statement, the advocacy letter, and treatment summary 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 on 23 April 2025. The AO stated in pertinent part:

Petitioner contends he incurred mental health concerns during military service, which may have contributed to the circumstances of his separation.

Petitioner contended he joined the Marines to avoid the abuse and conflict he sustained in his household. He claimed, "After joining, the orders and yelling brought back memories of home," and exacerbated his mental health concerns. He explained that his UA was to assist his younger siblings who were still living at home.

Petitioner submitted a March 2025 record of civilian mental health treatment since November 2023 for diagnoses of Major Depressive Disorder, recurrent, severe without psychotic features; Panic Disorder; and Attention Deficit-Hyperactivity Disorder, Inattentive presentation.

There is no evidence that he was diagnosed with a mental health condition in military service. He has presented evidence of mental health diagnoses that are temporally remote to his military service and appear unrelated. It is difficult to attribute his chronic UA to a mental health condition, particularly given his in-service statement.

The AO concluded, "There is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct may be attributed 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 and separation in lieu of trial by court-martial, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct 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 OTH 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. The Board also noted that the misconduct that led to your request to be discharged in lieu of trial by court-martial was substantial and determined that you already received a large measure of clemency when the convening authority agreed to administratively separate you in lieu of trial by court-martial; thereby sparing you the stigma of a court-martial conviction and possible punitive discharge. Finally, the Board concurred with the AO and determined that there is insufficient evidence that your misconduct may be attributed to a mental health condition. The Board agreed that your mental health diagnoses are temporally remote to your service and appear unrelated. Additionally, it is difficult to attribute your misconduct to a mental health condition based on your in-service statement regarding your misconduct. 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. Moreover, 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 serious misconduct more than outweighed the potential mitigation offered by any mental health conditions.

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 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.

As a part of the Caring for Camp Lejeune Families Act of 2012, qualifying Veterans can receive all their health care (except dental care) from Department of Veterans Affairs (VA) if they served on active duty at Camp Lejeune for at least 30 days between August 1, 1953 and December 31, 1987. The Board recommends you contact your nearest VA office to determine your eligibility for care.

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,

6/27/2025

