



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE RD
ARLINGTON, VA 22204

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Docket No. 8152-25
Ref: Signature Date

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Dear ■■■■■■■■■■

This is in reference to your application for correction of your late husband's, hereinafter referred to as Petitioner, 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 your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 3 March 2026. 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 Petitioner's naval record, applicable statutes, regulations, and policies, to include the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (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.

The following is the relevant factual background of your case based upon review of your naval record and/or the matters provided with your application:

1. Petitioner enlisted in the Marine Corps and commenced active duty on 3 October 1969. From July 1970 to May 1971, Petitioner participated in multiple combat operations in ■■■■■■■■■■.
2. On 12 September 1973, Petitioner was arrested by civilian authorities and charged with breaking and entering with intent to commit a felony and grand larceny. Ultimately, on 26

October 1973, Petitioner pleaded guilty to breaking and entering and was sentenced to confinement in a ■ State Prison.

3. On 5 November 1973, Petitioner submitted a written request for separation for the good of the service (GOS) in lieu of trial by court-martial for larceny, in violation of Article 121, Uniform Code of Military Justice (UCMJ). Prior to submitting this request, Petitioner conferred with a military lawyer at which time Petitioner was advised of his rights and warned of the probable adverse consequences of accepting such a discharge. As part of this discharge request, Petitioner admitted guilt to the foregoing offense and acknowledged that his characterization of service upon discharge would be Under Other Than Honorable (OTH) conditions.

4. Ultimately, the separation authority approved Petitioner's request and directed his commanding officer to discharge Petitioner with an OTH characterization of service by reason of GOS. Petitioner was so discharged on 25 January 1974.

5. Post-discharge, Petitioner applied to the Naval Discharge Review Board (NDRB) twice for a discharge upgrade. The NDRB denied Petitioner's requests, on 30 July 1975 and 11 January 1982, based on their determination that Petitioner's discharge was proper as issued.

In your application to this Board, you express a desire for the Petitioner's discharge character of service be upgraded and contend that: (1) Petitioner was not notified of administrative discharge and was unjustly held past his end of obligated service, (2) Petitioner was wrongfully discharged with an OTH characterization of service, (3) the record should be corrected because Petitioner has documented evidence of a diagnosis of "Senile Degeneration of the Brain" and "Post Traumatic Stress Disorder" that was certified and noted by a licensed physician on the Petitioner's Certificate of Death, (4) Petitioner's PTSD began during his time in ■, (5) Petitioner's "small crime" took place at the peak of his altered mental state, and (6) once the facts were considered Petitioner received a pardon by the Governor of the state of ■.

After careful review, the Board reached the following conclusions and denied your application for relief.

The Board initially concluded Petitioner was appropriately processed for administrative separation based on his request to be discharged for the GOS. While the Board carefully considered your contention for mitigation and argument that he committed his misconduct while in an altered state, the Board found no evidence indicating Petitioner was not mentally responsible for his offenses. Therefore, the Board determined the presumption of regularity applies to Petitioner's administrative separation and no error exists with his record.

However, because you raised the issue of mental health, the Board also requested an AO. As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 5 January 2026. The AO noted 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 indicative of a diagnosable mental health condition. He has provided

medical evidence of a diagnosis of PTSD that is temporally remote to his military service and attributed to his ■■■■■ combat exposure. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct. It is difficult to attribute theft to a symptom of undiagnosed PTSD. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, "There is post-service evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence that his misconduct may be attributed to PTSD or other mental health concerns."

In response to the AO, you stated you are just asking permission to bury Petitioner at a national cemetery and asked, "How can we make this happen?"

The Board applied liberal consideration to your claim that Petitioner suffered from a mental health condition, and to the effect that this condition may have had upon the conduct for which Petitioner was discharged in accordance with the Hagel and Kurta Memos. Applying such liberal consideration, the Board found sufficient evidence of a diagnosis of mental health condition that may be attributed to military service. This conclusion is supported by the AO and your post-service medical evidence. However, even applying liberal consideration, the Board found insufficient evidence to conclude that the misconduct for which Petitioner was discharged was excused or mitigated by his mental health condition. In this regard, the Board simply had insufficient information available upon which to make such a conclusion and recognized the same concerns raised in the AO. Moreover, even if the Board assumed that Petitioner's misconduct was somehow attributable to a mental health condition, the Board unequivocally concluded that the severity of his serious misconduct more than outweighed the potential mitigation offered by any mental health conditions. The Board disagreed with your characterization of his misconduct as a "small crime" and pointed out that Petitioner was involved in breaking and entering, and larceny of a Harley Davidson motorcycle.

In addition to applying liberal consideration to your claimed mental health condition and its potential effect upon your conduct in accordance with the Hagel and Kurta Memos, the Board also considered the totality of the circumstances to determine whether equitable relief is warranted in the interests of justice in accordance with the Wilkie Memo. In this regard, the Board considered, amongst other factors, your desire for a upgrade to Petitioner's characterization of service, your contentions, the totality of Petitioner's service, your need for veterans' benefits to bury Petitioner, Petitioner's relative youth and immaturity at the time of his misconduct, the negative effect Petitioner's discharge has had on his life, his rehabilitation efforts, his post-service record of accomplishments, his service to your community, his mental health issues, the character references you provided for review, and the passage of time since his discharge.

The Board found that the mitigating factors were not nearly sufficient to justify any equitable relief. Specifically, the Board found that the severity of your misconduct far outweighed all of the mitigating factors combined. In particular, the Board noted that the misconduct that led to

Petitioner's request to be discharged for the good of the service in lieu of trial by court-martial was substantial and determined that Petitioner received a large measure of clemency when the convening authority agreed to administratively separate him in lieu of trial by court-martial; thereby sparing him the stigma of a court-martial conviction and possible punitive discharge. The Board also considered the discrediting effect Petitioner's civil conviction had on the Marine Corps. Finally, the Board believed that it would be unjust to characterize Petitioner's less than honorable service in the same manner as the service of the thousands of service members who, unlike Petitioner, honorably completed their enlistments without engaging in misconduct warranting the early curtailment of their service. Therefore, the Board did not find an upgrade of Petitioner's discharge to General (Under Honorable Conditions) or Honorable to be warranted in the interests of justice. While the Board commends Petitioner for his post-service rehabilitation and acknowledged your desire to place him in a national cemetery, ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of his misconduct.

Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

Despite its finding that relief was not warranted in your case, this Board expressed its deepest sympathy 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,

3/20/2026

