



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: 7758-20
Ref: Signature Date



Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. After careful and conscientious consideration of the entire record, the Board for Correction of Naval Records (Board) found the evidence submitted was insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

A three-member panel of the Board, sitting in executive session, considered your application on 19 July 2021. 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 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). In addition, the Board considered the advisory opinion (AO) furnished by a qualified mental health professional dated 17 May 2021, which was previously provided to you.

You enlisted in the Marine Corps and began a period of active duty on 21 June 1965. On 9 July 1966, you arrived in Vietnam. During the period from 12 July 1966 to 21 April 1967, you participated in eight operations in Vietnam. On 22 March and 5 June 1967, you received nonjudicial punishment (NJP) for five hours of unauthorized absence (UA), willful disobedience, using disrespectful language, and disobeying a lawful order. On 27 July 1967, you departed Vietnam. On 27 September and 23 October 1967, you received NJP for three days of UA. On 15 February 1968, you were convicted by special court-martial (SPCM) of 36 days of UA. You were sentenced to a reduction in paygrade, confinement at hard labor, and a forfeiture of pay. On 11 March 1969, you were convicted by SPCM of three specifications of UA totaling 239 days. You were sentenced to a reduction in paygrade, a forfeiture of pay, confinement at hard labor, and a bad conduct discharge (BCD). On 29 July 1969, you waived your right to request restoration to duty. You stated "I want out of the service because I could take better care of my

family by being on the outside instead of being a Private in the service.” You received your BCD on 5 August 1969. On 14 September 1977, your initial discharge was changed and you were awarded a Clemency Discharge after you satisfactory completed alternate service pursuant to Presidential Proclamation No. 4313.

A qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO regarding your assertion that you were suffering from Post-Traumatic Stress Disorder during your service. The AO noted that based on the available evidence, the preponderance of available objective evidence failed to establish you were diagnosed with a mental health condition, suffered from a mental health condition at the time of your military service, or your in-service misconduct could be mitigated by a mental health condition.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to your assertions that: (a) you had mental health conditions and issues when you returned home from Vietnam and you believe your deployment to Vietnam caused significant mental distress; and (b) you had great difficulty adjusting when you returned home because you could not pull yourself together with the change from going to combat and back into a garrison unit, and you continued to make poor choices in your coping skills with your experience in Vietnam. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your four NJPs and two SPCM convictions outweighed these mitigating factors. Additionally, the Board concurred with the AO that based on the available evidence, the preponderance of available objective evidence failed to establish you were diagnosed with a mental health condition, suffered from a mental health condition at the time of your military service, or your in-service misconduct could be mitigated by a mental health condition.

Further, the Board noted that you received a pardon and a clemency discharge (CD) under the President Ford Clemency Program. However, neither the Veterans Administration (VA) nor Department of Defense (DoD) considers a recipient of a CD to be entitled to any benefits denied by reason of the original discharge. Your Clemency Discharge replaced your BCD, and is considered a neutral discharge, neither honorable nor less than honorable. The Board concluded that a further change, which would make you eligible for VA benefits, was not warranted. 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,

7/23/2021

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Signed by: █