



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: 7997-20
Ref: Signature Date

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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 26 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 26 May 2021, which was previously provided to you.

You enlisted in the Marine Corps and began a period of active duty on 6 July 1971. During the period from 20 February to 21 August 1973, you received four nonjudicial punishments (NJPs) for insubordinate conduct, two periods of unauthorized absence (UA) totaling seven days, and being absent from your appointed place of duty. On 30 May 1974, you were convicted by special court-martial (SPCM) of four specifications of UA totaling 38 days, and failure to comply with stragglers orders. You were sentenced to confinement at hard labor, a forfeiture of pay, and a reduction in paygrade. On 12 May 1975, you submitted a request for undesirable discharge for the good of the service for two periods of UA totaling 55 days. Prior to submitting this request for discharge, you conferred with a qualified military lawyer, were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. Subsequently, your request for discharge was granted, and on 11 August 1975, you received an other than honorable discharge in lieu of trial by court-martial. As a result of this action, you

were spared the stigma of an additional court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor.

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 mental health condition during your service. The AO noted that based on the available evidence, the preponderance of 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 attributed to 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 were under medical care with a dislocated knee; (b) you were not in stable physical or mental health, and did not understand the discharge papers; and (c) you were under a lot of stress due to family issues back home. 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, SPCM conviction, the referral of charges to a court-martial and your request for discharge outweighed these mitigating factors. Additionally, the Board concurred with the AO that based on the available evidence, the preponderance of objective evidence failed to establish you were diagnosed with an unfitting mental health condition, suffered from an unfitting mental health condition at the time of your military service, or your in-service misconduct could be attributed to an unfitting mental health condition. 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,

7/29/2021

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Executive Director

Signed by: █