

DEPARTMENT OF THE NAVY

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

> Docket No: 2455-21 Ref: Signature Date

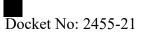
Dear :

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 limitations 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 29 September 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 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 an advisory opinion (AO) from a qualified mental health professional dated 4 August 2021, which was previously provided to you.

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 29 June 1971. On 11 September 1972, you received non-judicial punishment (NJP) for an unauthorized absence. On 15 March 1973, you were convicted by special court-martial (SPCM) of an unauthorized absence totaling 79 days, and wrongfully and unlawfully opening and secreting certain mail



matter belonging to other individuals. As punishment, you were awarded confinement, reduction in rank, forfeiture of pay and a bad conduct discharge (BCD). After the BCD was approved at all levels of review, you were discharged on 6 September 1974.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 4 August 2021. The AO noted that your records did not contain evidence of a diagnosis of a mental health condition or psychological/behavioral changes, which may have indicated a mental health condition. Throughout your disciplinary actions, counselings, and administrative processing, there were no concerns cited that would have warranted referral to mental health resources. Although you claimed PTSD, you did not provide any description of your purported trauma, symptoms that would meet the criteria for PTSD, how those symptoms interfered with your ability to function, or related to your in-service misconduct. The AO concluded by opining that the preponderance of objective evidence failed to establish you were diagnosed with PTSD or suffered from PTSD at the time of your military service, or your in-service misconduct could be attributed to PTSD or other mental health conditions.

The Board carefully reviewed your application, weighed all potentially mitigating factors, and considered your contention that: 1) due to your age at the time, you were not made aware of your options because you were not guilty; 2) all of your promotions were meritorious; and 3) you were pardoned by the Governor of and and received all of your rights back. After careful consideration of the AO and applying liberal consideration, the Board did not find an error or injustice that warrants upgrading your characterization of service or granting clemency in the form of an upgraded characterization of service.

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 contentions as previously discussed and your desire to upgrade your discharge character of service. The Board noted that you did not submit any supporting documentation or advocacy letters in support of your application. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct as evidenced by your NJP and SPCM conviction and subsequent BCD, outweighed these mitigating factors. Accordingly, given the totality of the circumstances, the Board determined 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

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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.

