



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: 3307-21

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.

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 1 December 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). Additionally, the Board considered a 19 August 2021 advisory opinion (AO) furnished by a qualified mental health provider, a copy of which was provided to you and to which you did not provide a response.

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 commenced a period of active duty on 26 October 1967. On 2 January 1968, you received nonjudicial punishment for disobeying an order, being

disrespectful to a noncommissioned officer, and for a short period of unauthorized absence. From the period of 1 August 1968 to 6 November 1968, you served in seven named combat expeditions in Vietnam. For your service in Vietnam, you were awarded the Vietnam Service Medal with one star and the Combat Action Ribbon. On 27 February 1969, you received nonjudicial punishment for disobeying an order. From 9 May 1969 to 24 October 1969, you were in a period of unauthorized absence. Your absence was apparently due to your incarceration following an arrest and conviction by civilian authorities for driving without a license, speeding, hit and run, crossing yellow line, and driving under the influence. On 29 December 1969, you were convicted by a special court-martial for this period of unauthorized absence as well as for disobeying an order and for treating a senior noncommissioned officer with contempt. On 20 February 1970, you received a psychiatric exam, at which you were diagnosed with asocial personality disorder, and you were found to be able to distinguish between right and wrong. On 6 April 1970, you were convicted by a general court-martial for striking a captain in the face, disobeying an order of a captain to return to your cell, assaulting a sergeant and a corporal, and destroying government property by overturning a food cart. As a result of this general court-martial, you were awarded as punishment a dishonorable discharge, among other things. According to documents in your official military personnel file (OMPF), you were in an unauthorized absence status from 12 May 1970 to 5 January 1971. There are also undated statements in your OMPF indicating that, while you were being transported by brig chasers, you escaped from their custody and stole their car. The statements further indicate that, in conducting your escape, you placed a belt around the neck of one of the chasers, forced the car to the side of the road, handcuffed the chasers, and drove them to █ where you abandoned the car. On 5 January 1971, you were discharged with a dishonorable discharge.

The Board carefully considered all potentially mitigating factors in your petition to determine whether the interests of justice warrant relief in your case including in accordance with the Wilkie Memo. You contend in your petition that you volunteered to join the Marines and go to Vietnam, and you were a machine gunner in combat and served honorably prior to, and in, Vietnam. You further stated that it was only after your return and you were using alcohol to help you cope with having returned from combat. You also explained that, upon return to the United States from Vietnam, you faced significant racial unrest and discrimination. You also contend that you believed you were arrested for desertion after you were already out of the Marine Corps, and that you understood you would have been discharged when you were in civilian custody for your driving-related offenses.

In connection with your assertion that you suffered from a mental health condition, the Board requested, and reviewed, the AO. The AO reviewed your service record as well as your petition and the matters that you submitted. According to the AO:

Petitioner's in-service records did not contain evidence he was diagnosed with an unfitting mental health condition or reported psychological symptoms/behavioral changes indicative of a diagnosable unfitting mental health condition. Records did show he was diagnosed with a personality disorder. A personality disorder is a lifelong pattern of unhealthy behaviors and thinking patterns. They are chronic disorders and not typically amenable to treatment within the operational requirements of Naval service. Unfortunately, Petitioner did not provide any

documentation to support an alternate mental health diagnosis or refute the personality disorder diagnosis. In addition, there was no evidence presented to attribute his misconduct to any psychological symptoms or behaviors due to a mental health condition or PTSD (i.e., description of symptoms, how the symptoms affected his ability to perform his duties).

The AO concluded, “it is my considered medical opinion the preponderance of available objective evidence failed to establish Petitioner suffered from a mental health condition at the time of his military service or his in-service misconduct could be mitigated by a mental health condition.”

Based upon its review, the Board concluded the potentially mitigating factors that you raised were insufficient to warrant relief. With respect to your contention relating to a mental health condition, the Board concurred with the findings of the AO. The Board noted that the AO observed that you did not provide medical evidence demonstrating that your misconduct could be attributed to a mental health condition. The Board was sympathetic to your position, and understands the rigors of having participating in seven named combat operations in Vietnam. Nevertheless, the Board considered that you committed a wide variety of misconduct, some of it very serious, and that it could find no error or injustice in the sentence that you were awarded at your general court-martial, which included a dishonorable discharge. In light of your receipt of two nonjudicial punishments, a special court-martial conviction, and a general court-martial conviction, as well as the finding of the AO that found no mental health condition that could mitigate your misconduct, the Board determined that your request does not merit relief.

You are entitled to have the Board reconsider its decision upon the 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,

12/16/2021

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Executive Director

Signed by: █