



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: 3805-21
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.

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.

A three-member panel of the Board, sitting in executive session, considered your application on 15 November 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 27 September 2021, which was previously provided to you.

You enlisted in the Marine Corps and began a period of active duty on 27 June 1971. On 24 July 1972, you received nonjudicial punishment (NJP) for disobeying a lawful general regulation by growing your hair longer than three inches. On 12 February 1974, you were counseled concerning your personal appearance and advised that a recommendation for administrative discharge would result if you were issued a permanent no shave chit. On 9 July 1974, you received NJP for failure to report to your appointed place of duty, disrespect, and willfull

disobedience. On 20 August 1974, you received NJP for two specifications of failing to go to your appointed place of duty, a brief period of unauthorized absence, dereliction of duty, two specifications of disobeying a lawful order, being disrespectful in language, disrespect towards a superior commissioned officer, and communicating a threat with a knife. On 23 January 1975, you were convicted by special court-martial (SPCM) of wrongfully use provoking words towards a petty officer, and assault of a Marine by swinging at him with a knife. You were sentenced to a period of confinement at hard labor, and a forfeiture of pay. On 25 March 1975, you were counseled concerning your frequent involvement with military authorities, and warned that further involvement could result in being processed for an other than honorable (OTH) discharge. On 9 June 1975, you submitted a written request for an undesirable discharge for the good of the service in order to avoid trial by court-martial for wrongful possession and use of marijuana. 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 27 June 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 a 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 Post-Traumatic Stress Disorder (PTSD) during your service. The AO noted that based on the available evidence, the preponderance of objective evidence failed to establish you suffered from any unfitting mental health conditions at the time of your military service, or that your in-service misconduct could be attributed to an unfitting 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 assertion that undiagnosed PTSD compromised you making decisions. 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 three NJPs, conviction by SPCM, the fact that you were, warned of the consequences of further misconduct, the referral of charges to a court-martial, and 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 suffered from any unfitting mental health conditions at the time of your military service, or that 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,

11/29/2021

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Executive Director

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