



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: 3922-21

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.

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 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 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 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 27 September 2021 advisory opinion (AO) furnished by a qualified mental health provider.

You enlisted in the Marine Corps and commenced a period of active duty on 8 September 1978. On 17 April 1979 you received nonjudicial punishment for failing to obey an order. On 11 May 1979, you received nonjudicial punishment for discharging a firearm through carelessness. On 13 November 1979, you received nonjudicial punishment for a period of unauthorized absence of approximately 12 hours and for being disrespectful to a corporal. On 2 April 1980, you were convicted by a special court-martial for stealing the payroll check of a first lieutenant. On 28 August 1980, you received nonjudicial punishment for two periods of unauthorized absence totaling approximately one work day and one full day and for willfully disobeying an order. You were on a period of unauthorized absence from 10 to 22 October 1980. Thereafter, you submitted a request for discharge to escape a trial by court-martial, and on 30 December 1980,

you were discharged with an other than honorable characterization by reason of your request for discharge. Your final discharge paperwork is not available in your official military personnel file, but in such circumstances, the Board applies a presumption of regularity. Specifically, the Board noted that your records demonstrate that you were discharged due to your request in order to escape a trial by court-martial, and such requests are approved only after one is charged with a violation of the uniform code of military justice that would warrant a discharge, consults with qualified counsel, the entirety of the request is reviewed by the chain of command, and the request is approved by an appropriate discharge authority.

In 1989, you filed an application for review of your discharge with the Naval Discharge Review Board (NDRB). In your application, you contended that your discharge was too harsh and inequitable based on your misconduct, that you had a counterproductive relationship with your command, and that your request for transfer was refused. The NDRB denied your application, finding that your discharge characterization was not too harsh or inequitable.

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. In your petition, you contend that you were discharged under nefarious circumstances. Your petition also included a notation by you checking a block that you believe you had a mental health condition that may relate to your discharge. In connection with your assertion relating to mental health conditions, the Board requested the AO. The AO explained that:

Petitioner's in-service records revealed an enlistment physical examination in which the Petitioner described himself in 'good health,' and did not endorse any history of mental conditions or substance abuse prior to enlistment. The remainder of Petitioner's in-service records did not contain any diagnosed mental health conditions, symptoms or behaviors indicative of a mental health condition, nor any nexus between his misconduct and a mental health condition. He did not provide any in-service or post-discharge clinical records in support of his petition for review.

The AO concluded, "based on the available evidence, it is my considered medical opinion the preponderance of objective evidence failed to establish Petitioner suffered from any unfitting mental health conditions at the time of his military service, or that his in-service misconduct could be attributed to an unfitting mental health condition."

Based upon its review, the Board concluded the potentially mitigating factors that you raised were insufficient to warrant relief. After careful review of your contentions and review of all of the matters of record, the Board was unable to discern support for your contention that you were discharged under nefarious circumstances. With respect to your assertion that you suffered from a mental health condition, the Board concurred with the finding of the AO. In conclusion, the Board determined that your misconduct, as evidenced by the imposition of nonjudicial punishment on four occasions, a special court-martial for stealing the payroll check of a commissioned officer, and your request for a discharge to escape another trial by court-martial, provided sufficient evidence that your discharge was not inequitable. Given the totality of the

circumstances, and in light of your serious 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,

11/29/2021

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Executive Director
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