



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

█  
Docket No: 4381-21  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 11 February 2022. 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 the advisory opinion (AO) furnished by a qualified mental health provider which was previously mailed to you at your counsel's address as indicated on your application.

You enlisted and began a period of active duty in the Marine Corps on 2 March 1966. You participated in counter-insurgency operations in the Republic of Vietnam from 15 September 1966 to 20 July 1967 and were awarded a Combat Action Ribbon amongst other awards and decorations. On 20 April 1966, you received nonjudicial punishment (NJP) for engaging in a fight in violation of Article 134, Uniform Code of Military Justice (UCMJ). You were convicted by summary court martial (SCM) on 13 May 1967 for a two day period of unauthorized absence (UA) in violation of Article 86, UCMJ. On 21 July 1967, you were convicted by general court martial (GCM) for violation of two specifications of Article 113, UCMJ for leaving your post as a sentinel for general

security in Da Nang, Republic of Vietnam before you were regularly relieved, and for being found drunk while on post as a sentinel for general security. At this GCM you were also convicted of four specifications of violation of Article 128, UCMJ, for shooting a female in the head, hip, leg, and arm with a means likely to produce grievous bodily harm with a Daisy BB gun; shooting a male in the buttock, back, and above his eye with a means likely to produce grievous bodily harm with a Daisy BB gun; unlawfully striking a female by grabbing her by the blouse; and unlawfully striking a male by grabbing him by his shirt. You were further convicted at this GCM of violation of four specifications of Article 134, UCMJ, for wrongful communication of a threat to injure a female by shooting her with an M-14 rifle; wrongfully and willfully discharging an M-14 rifle under circumstances such as to endanger human life; as a result of previous indulgence in intoxicating liquor, incapacitated for the proper performance of duties; and drunk and disorderly in uniform in a public place, the village. You were sentenced to forfeit \$70 pay per month for 12 months, confinement at hard labor for 12 months, and to be discharged from the service with a bad conduct discharge (BCD). On 28 May 1968 you were so discharged.

You contend that there is a procedural defect in your case in that the charges are multiplicitous. You further contend the BCD was substantively unfair, does not serve a proper purpose, and you should be allowed to apply for Department of Veterans Affairs (VA) benefits. You state multiple error/injustices exist to include abuse of authority, due process violations, presumption of innocence, duress, coercion, repetitive verbal abuse and degrading treatment, and command prejudice. You contend your service was honorable apart from the incidents, you put in hundreds of 15-18 hour days in wartime service, were mistreated in the brig, stabbed, and sprayed with Agent Orange while in Vietnam, and experience signs and symptoms of Post-Traumatic Stress Disorder (PTSD) which should be evaluated by the VA.

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 noted above and desire to upgrade your discharge. The Board also relied on the AO in making its determination. The AO noted that it is reasonable that some of your misconduct could be attributed to symptoms of PTSD such as UA and alcohol consumption, however, other elements of your misconduct are more likely due to your characterological features. For example, your first NJP occurred prior to deployment and cannot be attributed to PTSD symptoms from combat. Additionally, the repeated discharge of weapons at or near civilians and assault charges in the combat arena are more likely related to your characterological disturbance rather than symptoms of unrecognized PTSD, given your behavior prior to deployment. Consequently, the AO concluded that there is evidence that your PTSD diagnosis can be attributed to military service, but there is insufficient evidence that all of your misconduct could be attributed to PTSD or an unfitting mental health condition. Based upon this review, the Board concluded that the potentially mitigating factors in your case were insufficient to warrant relief. Specifically, the Board determined that the seriousness of your misconduct, as evidenced by your NJP, SCM, and GCM, outweighed these mitigating factors. In making this finding, the Board noted that you were found guilty of multiple specifications of injuring civilians. Further, the Board was not persuaded by your arguments of error and unfairness. In reviewing your record, the Board determined the preponderance of the evidence supports a finding that you were afforded all the due process required by law and found no evidence of error or unfairness with your GCM conviction. Accordingly, given the totality of the circumstances, the Board determined that your request does

not merit relief. Additionally, whether or not an individual is entitled to veterans' benefits is a matter under the cognizance of the VA. You may contact the nearest office of the VA concerning your right to apply for benefits. If benefits have been denied, you may be able to appeal the denial under procedures established by the VA.

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,

3/3/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]