



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

██████████
Docket No: 4945-21
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 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 Board waived the statute of limitations 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 7 January 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 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 to 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 provided to you. Although you were afforded an opportunity to submit a rebuttal, you did not do so.

You enlisted in the Marine Corps and began a period of active service on 31 October 1972. On 19 April 1973, you received nonjudicial punishment (NJP) for violation of Uniform Code of Military Justice (UCMJ) Article 86, unauthorized absence (UA), and Article 92, failure to obey a lawful order. You received a second NJP for being UA on 21 April 1973 from the extra duties to which you were assigned as punishment for your earlier misconduct. Following your third NJP on 4 May 1973 for an additional UA period, you were counseled for failing to complete training due to unsatisfactory attendance. Following additional periods of UA in June 1973, you received 30 days of correctional custody at your fourth NJP. You committed additional UA periods in

August and October of 1973, for which you received a fifth NJP. Although your punishment was suspended, you again went UA until apprehended by military authorities on 30 October 1973, after which you received a sixth NJP for that absence as well as an Article 134 offense for possession of an altered military identification card, and were counseled that you were being recommended for administrative separation due to frequent involvement with military authorities and lack of desire to be a productive Marine. After you received a seventh NJP for an additional period of UA on 16 November 1973, your pattern of absences continued with multiple periods of UA until you were apprehended by civilian authorities on 21 May 1974 and confined pending trial for civil charges of breaking and entering. After being returned to military control on 19 July 1974, you were charged for three previous periods of UA. You pled guilty to all charges on 21 August 1974 before a special court-martial (SPCM).

Although your sentence included a bad conduct discharge (BCD), and your discharge was suspended for a period of 6 months, you again went UA on 2 October 1974 and received an eighth NJP for that offense as well as for Article 91, willful disobedience to lawful orders. Following another two periods of UA in October 1974 and November 1974, the latter of which involved you wrongfully appropriating a friend's vehicle for nearly 3 weeks, your chain of command referred your misconduct to the battalion commander recommending another SPCM and BCD. Your final counseling warning on 18 November 1974 again cited your substandard performance and frequent misconduct. You were issued a formal letter notifying you of your defective attitude and deficiencies. The Marines conducting the inventory of your personal effects for pre-trial confinement discovered 1,598 grams (nearly 3.5 pounds) of marijuana and 83 small plastic bags. During your confinement, Iowa Social Service contacted your command regarding non-support of dependents. While confined, your medical records were lost; however, during your separation physical, you reported being in good health. Your defense attorney coordinated with the prosecutor to request deferral of trial on any additional charges of Article 86, Article 121, and Article 112a until final action was taken on the decision whether your suspended BCD would be vacated. On 3 February 1975, the reviewing authority approved vacating the suspended BCD, which was approved upon appellate review, and you were discharged with that characterization of service on 4 March 1975.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warranted relief in your case in accordance with the Wilkie memo, to include but not limited to, your contention that your discharge was unfair and influenced by racial bias, that your discharge characterization did not change after 6 months, that your medical discharge was taken from you, that you were lied to about your discharge, and that you served your country but have not received the same recognition as other Veterans, which you contend that you deserve. The Board also took into consideration your concern that you have learning challenges and difficulty understanding documents.

The Board considered the AO, which noted that there are no in-service or post-service clinical records indicative of a mental health condition which would mitigate your misconduct, and the Board concurred with the opinion of the AO that the evidence failed to establish that you suffered from PTSD or an unfitting mental health condition at the time of your military service. Although you contend that a medical discharge was taken from you, there is no indication in your records of any medical condition or pending medical discharge, and you expressly endorsed

good health at the time of your separation physical. With respect to your contentions of unfairness and racial bias in your characterization of service, the Board observed the extensive, continuous, and escalating scope of your in-service misconduct, which continued in spite of multiple opportunities that your command leadership afforded you to correct your behavior and continue to serve, to include suspending your properly adjudged BCD and, rather than place you in further legal jeopardy with a second trial for serious offenses, permitting your expedient discharge by vacating the suspended BCD. Based upon this review, the Board concluded the potentially mitigating factors you submitted were insufficient to warrant relief. Specifically, the Board determined that your misconduct significantly outweighed the factors you submitted for consideration. Accordingly, 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 is attached 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,

1/24/2022

█

Executive Director

Signed by: █ 8