



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: 5114-21
Ref: Signature Date

Dear ■:

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 6 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 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 30 September 2021, which was previously provided to you.

You enlisted in the Navy and began a period of active duty on 8 September 1970. On 1 June 1972, you submitted a written request for an undesirable discharge for the good of the service in order to avoid trial by court-martial for 120 days of unauthorized absence. 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. On

9 June 1972, medical staff determined that: (a) you were neither psychotic nor suffering from any other psychiatric condition which would have render you either unable to distinguish between right and wrong or incapable of adhering to the right; and (b) there was no evidence you suffered from any such condition in the past. On 14 June 1972, your case was forwarded to the separation authority. Subsequently, your request for discharge was granted and on 22 June 1972, 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 a mental health condition during your service. The AO noted that based on the current available evidence, there is insufficient evidence that you incurred a mental health condition during your military service, and there is insufficient evidence that your misconduct should be attributed to a 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 assertions that: (a) you had severe difficulty adapting to your time in the service, and believe your mental condition is due to your time in-service; and (b) you believe you should not have to be punished for the rest of your life for something that was out of your control. 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 lengthy period of UA, the referral of charges to a court-martial and your request for discharge outweighed these mitigating factors. Additionally, the Board believed that considerable clemency was extended to you when your request for discharge was approved. The Board also concurred with the AO that based on the current available evidence, there is insufficient evidence that you incurred a mental health condition during your military service, and there is insufficient evidence that your misconduct should be attributed to a 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,

12/20/2021

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Executive Director

Signed by: █