



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

█
Docket No: 5307-21
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 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 13 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 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). Additionally, the Board considered a 31 October 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 21 March 1966. On 25 September 1970, you were discharged with an other than honorable characterization of service. Although your discharge documents are not available in your service record, the Board applies a presumption of regularity in such cases. On 14 April 1972, you were issued a correction to your Certificate of Release or Discharge from Active Duty (DD Form 215), which states that your original DD Form 214 was canceled and superseded, but the DD Form 215 did not reflect a new characterization of service. You have indicated in your petition that your discharge characterization was in fact upgraded to general (under honorable conditions).

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. You contend in your petition that you served honorably in the Marine Corps for nearly four years, until you turned yourself in due to addiction issues, after which you were discharged. You further contend that while you were on active duty you struggled with esteem issues that related to your killing of your father by accidental discharge of a shotgun while you were on leave from boot camp. You also provided information concerning your positive professional attainment and community involvement that you have engaged in since your discharge from the Marine Corps.

In connection with your assertion that you suffered from a mental health condition, the Board requested, and reviewed, the AO. The AO reviewed your service record as well as your petition and the matters that you submitted. According to the AO:

Petitioner's incomplete in-service health record did not contain any diagnosed mental health conditions, or symptoms or behaviors indicative of a mental health condition. Throughout his military service, disciplinary actions and administrative processing, there were no indications of a mental health condition requiring referral to mental health resources. Additional information, such as post-service treatment records or VA Disability evaluations describing the Petitioner's mental health diagnosis and its specific link to his misconduct, are required to render an alternate opinion. Should the Petitioner choose to submit additional records, they will be reviewed in context of his claims.

Though Petitioner carried a post-discharge service-connected disability rating from the VA for PTSD, there were no clinical records provided that detailed the symptoms comprising the diagnoses, effect on his occupational functioning, or that showed a nexus with his misconduct.

The AO concluded, "it is my considered medical opinion there is evidence Petitioner was diagnosed with PTSD post-discharge, but that there is insufficient evidence that Petitioner's in-service misconduct could be attributed to PTSD or other unfitting mental health conditions."

Based upon its review, the Board concluded the potentially mitigating factors that you raised were insufficient to warrant relief. With respect to your contention relating to a mental health condition, the Board concurred with the findings of the AO. The Board acknowledged your position that you have addressed mental health challenges, but it was unable to find a nexus between that and your naval service. With respect to your contentions relating to your post service positive activities, the Board acknowledged and commended you for your positive professional attainments and the service to your community. However, the Board found these attainments were insufficient to grant the relief requested. Accordingly, in view of the entirety of your record and your submission, 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,

1/26/2022

█

Executive Director

Signed by: █