



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: 5923-21
Ref: Signature Date

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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.

A three-member panel of the Board, sitting in executive session, considered your application on 3 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 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 1 November 2021, which was previously provided to you.

You enlisted in the Marine Corps and began a period of active duty on 21 October 1972. On 2 July 1973, you were counseled concerning your conduct and warned that further misconduct could result in administrative discharge action. On 28 November 1973, you received nonjudicial punishment (NJP) for disobeying a lawful order, and using disrespectful language. On 23 January 1974, you were counseled concerning your conduct and again warned that further misconduct could result in administrative discharge action. On 22 April 1974, you received NJP for willful disobedience of a lawful order, and using disrespectful language. On 8 April 1975, you received NJP for two specifications of unauthorized absence (UA) totaling 34 days, and breaking restriction. On 12 February 1976, you submitted a written request for an undesirable discharge for the good of the service in order to avoid trial by court-martial for 157 days of UA, and communicating a threat. 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. Subsequently, your request for discharge was granted and on 2 March 1976, 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 was suffering from a mental health condition during your service. The AO noted that based on the current available evidence, there was insufficient evidence that you may have incurred a mental health condition during military service, and there is insufficient evidence that your misconduct could be mitigated by 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 believe that because of your height, you were always being hassled and picked on, and you decided to accept whatever punishment that command gave you so you could get out of the service; (b) you loved being a Marine but were unable to take the daily abuse, you do not remember what you were charged with, and you just agreed to whatever you were told; and (c) you have been suffering from untreated Anxiety, Depression, PTSD, and have been homeless on and off for the last 30 years. 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 three NJPs, the fact that you were, counseled and warned, on more than one occasion, of the consequences of further deficiencies in your performance and or conduct, the referral of charges to a court-martial, and your request for discharge outweighed these mitigating factors. Additionally, the Board concurred with the AO that based on the current available evidence, there was insufficient evidence that you may have incurred a mental health condition during military service, and there is insufficient evidence that your misconduct could be mitigated by 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,

1/19/2022

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Executive Director

Signed by: █