



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: 7674-21
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 30 March 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 an advisory opinion (AO) from a qualified mental health professional dated 8 February 2022, which was previously provided to you.

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.

You entered active duty with the Marine Corps on 22 September 1969. During the period from 29 January to 22 September 1970, you received three instances of non-judicial punishment (NJP) for unauthorized absence (UA), attempted destruction of government property belonging to another Marine, and assault on another Marine. On 13 January 1971, a special court-martial (SPCM) convicted you of disobeying a lawful order, two specifications of disrespect in language, and treating with contempt. During the period from 28 March and 22 May 1972, you received two additional NJPs for UA totaling 12 hours and disrespect toward a commissioned officer. On 12 July 1972, a

SPCM convicted you of three specifications of disrespect in language toward a non-commissioned officer (NCO), assault by striking another Marine in the mouth with your fist, and assault by shooting at another Marine with a dangerous weapon. You were sentenced to reduction to E-1, forfeiture of pay, confinement for six months, and a bad conduct discharge (BCD). After the BCD was approved at all levels of review, on 5 July 1973, you were so discharged.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 8 February 2022. The AO stated in part that based on the current available evidence, there is insufficient evidence that you may have incurred PTSD during military service or that your misconduct could be attributed to PTSD.

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 desire to upgrade your discharge and contentions that you were experiencing a mental health condition due to being exposed to combat during █, that your mother pushed you into joining the Marine Corps, and that you need Department of Veterans Affairs (DVA) benefits. Unfortunately, after careful consideration of the AO and applying liberal consideration, the Board did not find an error or injustice that warrants upgrading your characterization of service or granting clemency in the form of an upgraded characterization of service.

The Board noted that there is no evidence in your record, and you submitted none, to support your contention that your mother pushed you into joining the Marine Corps. Further, the Board noted you did not submit any post-discharge character or advocacy letters for the Board to consider. Finally, the Board noted that whether or not you are eligible for benefits is a matter under the cognizance of the DVA, and you should contact the nearest office of the DVA concerning your right to apply for benefits.

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your five NJPs and two SPCM convictions, outweighed the potential mitigating factors. As a result, when weighing the seriousness of your misconduct against the brevity of your active duty service, the Board concluded that the preponderance of the evidence supports a finding that your misconduct was serious and your conduct was a significant departure from that expected from a Marine. In making these findings, the Board found that your misconduct displayed a complete disregard for military authority and regulations. Therefore, the Board determined your BCD remains appropriate. Accordingly, given the totality of the circumstances, the Board determined 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,

4/5/2022

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Executive Director

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