



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: 704-22
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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. Your current request has been carefully examined by a three-member panel of the Board, sitting in executive session on 18 July 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 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel Readiness (Kurta 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). As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an Advisory Opinion (AO) on 15 April 2022. You were provided an opportunity to respond to the AO, but chose not to do so.

This Board previously denied your request for an upgrade to your characterization of service on 16 June 1980. The Board determined your Bad Conduct Discharge (BCD) issued on 9 July 1971 was appropriate and equitable under the laws and regulations in effect at the time. You subsequently submitted a request for reconsideration that was denied, on 14 July 2000, due to lack of new material evidence. Finally, your second request for reconsideration was also denied, on 2 February 2007, for the same reason.

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 incurred a mental health condition as a result of military service, which might have mitigated your discharge. In addition, you contend that you deserve a General (Under Honorable Conditions) discharge due to the amount of time you served as an honorable serviceman and the medal you received while serving on active duty. You further contend that, (1) My family and I were told by the recruiter that I would never go to Vietnam which convinced my parents to sign over their consent for me to enlist, (2) after a full year of service I was issued orders to Vietnam that caused my family and I extreme stress and disorientation about the

military, yet I reported to Vietnam and served my country although I could not kill the Vietnam people for no reason, and (3) at the time of my court-martial, I explained that I was a conscientious objector due to my moral and religious beliefs. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

In connection with your assertion that you incurred a mental health condition, a qualified mental health professional reviewed your request for correction to your record and provided the Board with the AO. The AO stated in pertinent part:

Among available records, there is no evidence that he was diagnosed with a mental health condition in military service. Throughout his disciplinary processing, there is no evidence that concerns were raised of a mental health condition that would have warranted a referral for evaluation. Unfortunately, he has provided no medical evidence in support of his claims. His current statements are temporally remote from military service and insufficient to establish a clinical diagnosis. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) are required to render an alternate opinion.

The AO concluded, "[b]ased on the available evidence, it is my clinical opinion that there is insufficient evidence of a mental health condition that could be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition."

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 special court-martial (SPCM), outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct along with the aggravating factors in your case. The Board noted that you were apprehended while in a long-term unauthorized absence (UA) status and admitted to going UA to avoid deploying to Vietnam. Finally, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to a mental health condition. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Marine and continues to warrant a BCD. After applying liberal consideration, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting clemency in the form of an upgraded characterization of service. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

In the absence of sufficient new evidence for reconsideration, the decision of the Board is final, and your only recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

Sincerely,

8/3/2022

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Deputy Director

Signed by: █