

DEPARTMENT OF THE NAVY

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

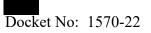
> Docket No: 1570-22 Ref: Signature Date

Dear :

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 limitation 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 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 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 the advisory opinion (AO) furnished by a qualified mental health provider and the documents you submitted in rebuttal.

You enlisted and began a period of active duty in the Marine Corps on 14 June 1968. You then entered into a period of UA from 20 August 1969 to 25 March 1970 for a total of 216 days in violation of Article 86, Uniform Code of Military Justice. Upon your return, on 25 May 1970, you were evaluated by psychiatry and diagnosed with Emotionally Unstable Personality. The evaluation noted, "...this individual suffers from an inherent, pre-existing personality deviation which has not been aggravated by the service and which does not require and will not benefit from psychiatric hospitalization or treatment."



On 25 June 1970, you submitted a request for discharge for the good of the service. The request was approved and you were discharged, on 22 July 1970, with an Other Than Honorable (OTH) characterization of service.

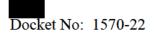
On 1 November 1975, the President granted you a full, unconditional pardon for your absence offenses, and a clemency discharge to replace your OTH characterization of service. On 26 July 1976, you were issued a DD Form 215 in recognition of satisfactory completion of alternate service pursuant to Presidential Proclamation Number 4313.

Subsequently, you unsuccessfully applied for a discharge upgrade to this Board on multiple occasions but were denied in 1992 and 1993. However, on 9 April 2020, this Board reconsidered your request based on your request and granted your request to upgrade your characterization of service, narrative reason for separation, and corresponding separation codes. On 8 July 2020, you were issued a new DD Form 214 indicating your characterization of service as General (Under Honorable Conditions), narrative reason for separation as Secretarial Authority, separation authority as MARCORSEPMAN par 6421, and separation code as JFF1.

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. You contend that your current application is not a reconsideration but a new application based on the mental health conditions you were diagnosed with in-service, and clemency based on current policy memoranda. You state you were an excellent Marine with 4.8/4.7 traits until your friends were killed in Vietnam. You state your parents thought you had died which caused their health to deteriorate. You contend your Commanding Officer approved a humanitarian transfer request which was ultimately denied by Headquarters Marine Corps and, consequently, you entered a UA status to be with your parents until you voluntarily returned to base. You state that while in a UA status, you received mental health treatment from a civilian psychiatrist and provided a letter to your command which the command lost. You state you were diagnosed with a moderate degree of psychiatric impairment; and the civilian psychiatrist noted you experienced mental harassment and suffered from occasional fainting and frightening dreams. You further state you completed 18 months of alternative service, your period of UA was pardoned by President Ford, and your current application should be reviewed de novo. You also state that since your discharge in 1970, a number of laws and regulations have been implemented which represent substantial enhancements to service member protections. For purposes of clemency consideration, the Board noted you provided supporting documentation describing post-service accomplishments and advocacy letters.

As part of their review, the Board considered the AO based on your claim of a mental health condition. The AO states in pertinent part:

Among the available documents, the Petitioner was diagnosed with a personality disorder during military service, which indicates characterological traits that are unsuitable for military service. Unfortunately, the Petitioner has provided no post-service medical evidence to support his claims. There is no medical evidence that his misconduct was not related to his unsuitability for military service. Additional records (e.g., post-service 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 may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition, other than his in-service diagnosed personality disorder."

In response to the AO, you provided an additional statement and documentary evidence that raised arguments with certain findings of the AO and reiterated your position that the interests of justice require your discharge characterization be upgraded to Honorable and you be assigned a less stigmatizing reentry code.

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 long term UA and good of the service request, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the negative impact it likely had on the good order and discipline of your unit. Further, the Board noted that you already received a large measure of clemency through the presidential pardon and when this Board granted you relief in 2020. Finally, notwithstanding your rebuttal evidence, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to a mental health condition, other than your in-service diagnosed personality disorder. As a result, the Board concluded significant negative aspects of your active service outweighed the positive aspects and continued to warrant a General (Under Honorable Conditions) characterization. While the Board commends your continued post-discharge good character, 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.

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.

