



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: 1800-22

Ref: Signature date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 11 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, applicable statutes, regulations, and policies, to include the SECDEF Memo of 3 September 2014 (Hagel Memo), USD Memo of 25 August 2017 (Kurta Memo), and USD Memo of 25 July 2018 (Wilkie Memo). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional dated 12 May 2022, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you did not do so.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Marine Corps and began a period of active duty on 14 November 1963. On 18 August 1964, you received nonjudicial punishment (NJP) for consuming alcohol while on fire watch, and failure to obey a lawful order. On 8 March 1965, you deployed to █. On 17 April 1965, you received a second NJP for failure to report to your prescribed place of duty. On

12 July 1966, you were convicted by summary court martial (SCM) for stealing money from a fellow Marine. You were sentenced to reduction to the rank of E-2 and confinement at hard labor. On 10 August 1966, you were convicted by special court martial (SPCM) for larceny. You were sentenced to a bad conduct discharge (BCD), forfeiture of pay, and confinement at hard labor. On 4 September 1966, you began a period of UA which lasted 7 hours, and 57 minutes. On 12 September 1966, you were convicted by SCM for being absent from your appointed place of duty-base confinement facility. You were sentenced to forfeiture of pay in the amount of \$86.00 for a period of one month. On 21 September 1966, your SCM sentence was determined to be correct in law and fact.

As a result of your misconduct, on 25 January 1967, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to frequent involvement. On the same date, your commanding officer recommended an Other Than Honorable (OTH) discharge characterization of service by reason of misconduct due to frequent involvement. On 10 February 1967, your administrative separation proceedings were determined to be sufficient in law and fact. On 24 February 1967, the discharge authority approved and ordered an OTH discharge but suspended your discharge for a probationary period of one year.

On 18 August 1967, you began a second period of UA which lasted 42 days. On 26 August 1967, you were apprehended by civilian authorities and charged with minor possession of alcohol. On 14 September 1967, you began a third period of UA which lasted 16 days and resulted in your apprehension by civilian authorities. On 2 October 1967, you began a fourth period of UA which lasted eight days. On 2 November 1967, you were convicted by SPCM for UA from appointed place of duty, UA, disrespectful in language, failure to register your POV, and wrongful use of another member's base vehicle pass with the intent to deceive. You were sentenced to a BCD, confinement at hard labor, and forfeiture of pay. On 5 July 1968, you began fifth period of UA which lasted eight days. On 23 July 1968, a Navy Review Board approved and affirmed your SPCM sentence. On 9 August 1968, you were discharged with a BCD characterization of service by reason of conviction by SPCM.

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 for a discharge upgrade and contentions that your misconduct was attributed to Post Traumatic Stress Disorder (PTSD) as a result of serving in Vietnam for 13 months. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. He has provided no medical evidence in support of his claims. Although much of his misconduct occurred following his deployment to █ his personal statement is not

sufficiently detailed to provide a clinical diagnosis or establish a nexus with his misconduct. Additionally, theft, wrongful use of a vehicle pass, and financial mismanagement are not typical symptoms of PTSD. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The AO concluded, “[b]ased on the available evidence, it is my clinical opinion that there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence that his misconduct may be attributed to PTSD.”

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 NJPs, SCMs and SPCMs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct show a complete disregard for military authority and regulations. Further, the Board considered that you were provided multiple opportunities to correct your conduct, included the suspension of your first undesirable discharge, but chose not to do so. Therefore, the Board found that you already received a large measure of clemency in your case. Finally, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to PTSD. 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.

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,

7/28/2022

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Deputy Director
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