



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: 2121-22

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 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 27 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 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional dated 18 May 2022, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you did not do so.

You enlisted in the Marine Corps and began a period of active duty on 1 October 1964. From a period beginning on 20 August 1965 to 30 June 1966, you were deployed to █. On 8 September 1966, you began a period of unauthorized absence (UA) which lasted 17 days. On 8 October 1966, you began a second period of UA which lasted three days and resulted in your apprehension by civilian authorities. On 4 November 1966, you were sentenced to confinement in federal prison after pleading guilty to interstate transportation of a stolen vehicle. On 14 December 1966, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to conviction by civilian court. On the same date, you elected to waive all your procedural rights. On 27 December 1966, your commanding officer recommended

an Other Than Honorable (OTH) discharge characterization of service by reason of misconduct due to conviction by civilian authorities. On 16 January 1967, your administrative separation proceedings were determined to be sufficient in law and fact. On 23 January 1967, the discharge authority approved and ordered an OTH discharge characterization of service by reason of misconduct due to conviction by civilian authorities. On 30 January 1967, you were discharged. On 15 January 2022, this board denied your request for a discharge characterization upgrade.

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 you were given a Presidential Pardon in 1972 for the crime that led you to prison, the discharge has kept you out of trouble since 1966, and you do not deserve your assigned characterization of service. Additionally, you asserted that your PTSD condition may be related to the circumstances of your case. 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 Petitioner 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. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish a clinical diagnosis. While it is possible that UA could be attributed to undiagnosed Post Traumatic Stress Disorder (PTSD) avoidance symptoms, auto theft is not a typical symptom of PTSD. Additional records (e.g., postservice medical 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 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 conviction by civilian authorities, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the discrediting effect it likely had on the Marine Corps. Additionally, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to a mental health condition. The Board agreed that larceny is not the type of misconduct normally associated with PTSD. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Sailor/Marine and continues to warrant an OTH characterization. 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,

8/15/2022

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Executive Director

Signed by: █