



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. 2923-22
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.

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 20 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 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 an advisory opinion (AO) from a qualified mental health professional, 13 May 2022. Although you were provided an opportunity to comment on the AO, you did not do so.

You entered active duty with the Marine Corps on 18 December 1971. During the period from 28 March 1972 to 22 August 1972, you received two non-judicial punishments (NJP) for absence from appointed place of duty and an unauthorized absence (UA) of two hours and 15 minutes. On 17 October 1972, a special court-martial (SPCM) convicted you of breach of peace, failure to obey a lawful order, and impeding an investigation by destroying forms. On 24 January 1973, you received NJP for failure to go to appointed place of duty. Subsequently, you were notified of pending administrative separation action by reason of frequent involvement. However, on 27 April 1973, a summary court-martial (SCM) convicted you of three specifications of failure to go to appointed place of duty and a single specification of dereliction of duty. On 7 August 1973, civil authorities convicted you of aiding and abetting larceny and assault with a deadly weapon. You were sentenced to 12 months confinement (suspended) and two year of probation. On 17

August 1973, an Administrative Discharge Board (ADB) recommended you be discharged with a General (Under Honorable Conditions) characterization of service due to unfitness. On 5 September 1973, the separation authority (SA) disagreed with the ADB's recommendation and directed that you be retained in the Marine Corps.

On 21 September 1973, you submitted a written request for discharge for the good of the service (GOS) to avoid trial by court-martial due to two specifications of UA totaling 26 days, 38 specifications of absence from appointed place of duty, and 11 specifications of disobeying a lawful order or regulation. Prior to submitting this request, you conferred with a qualified military lawyer, at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. Your request was granted and your commanding officer was directed to issue an Other Than Honorable (OTH) discharge for the good of the service. As a result of this action, you were spared the stigma of a court-martial conviction, as well as the potential penalties of such a punitive discharge. On 24 October 1973, you were so discharged.

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 contention that you ingested LSD/acid inadvertently, which resulted in mental health side effects and contributed to your misconduct. 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, a qualified mental health professional reviewed your request and provided the Board with an AO on 13 May 2022. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation during his enlistment, properly evaluated, and received no diagnosis of a mental health condition. This determination was based on observed behaviors and performance during his period of service, psychological evaluation, and the information he chose to disclose to the mental health clinician. A "Situational Reaction" is roughly equivalent to current clinical codes indicating an occupational problem or other problem related to psychosocial circumstances that does not meet the severity or criteria of a mental health diagnosis. Unfortunately, the Petitioner has provided no medical evidence to support his claims and his personal statement is not sufficiently detailed to establish a clinical diagnosis or nexus with his misconduct. 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 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."

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 NJPs, SPCM, SCM, civil conviction, and good of the service discharge request, outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and determined that your conduct showed a complete disregard for military authority and regulations. Further, the Board noted you were provided an opportunity to correct your behavior when you were retained by the SA despite a recommendation from your CO and ADB that you be separated. Despite being given the opportunity, you continued to commit misconduct that led to additional court-martial charges. This factor, along with the Marine Corps' decision to accept your good of the service discharge request, led the Board to find 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 a mental health condition and found no evidence to support your contention of innocent ingestion of LSD. As a result, the Board concluded that your conduct constituted a significant departure from that expected from a Marine and continues to merit an OTH characterization of service. 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 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,

7/28/2022

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Deputy Director

Signed by: █