



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

█
Docket No: 4099-22
Ref: Signature Date



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 Board waived the statute of limitation 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 16 September 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 to 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) of a qualified mental health provider and licensed clinical psychologist which was previously provided to you. You were afforded an opportunity to submit a rebuttal, which was received on 9 August 2022 and reviewed by the AO to assess the extent to which, if any, impact it had on the original AO.

You enlisted in the Marine Corps and began a period of active duty on 8 April 1976. During the fall and winter of 1976, you absented yourself with authority for two periods of 39 then 42 days for which you were convicted by Special Court-Martial (SPCM) for two specifications of violating Article 86, unauthorized absence (UA). Shortly after completing your sentence of confinement, you again absented yourself for two additional periods of 78 then 18 days during the spring and summer of 1977 for which you were convicted of two additional specifications of violating Article 86 by a second SPCM which sentenced you to a punitive discharge in addition

to confinement. You immediately waived restoration to active duty and requested appellate leave to return home for family reasons. Your official military personnel file includes prisoner records from your confinement which, upon your 1 September 1977 admission, document that you had a poor attitude toward restoration and had stated that you were “of a faith that believes that it is not right to be in the military.” Subsequent prisoner records regarding your preference for clemency specify your request for waiver of restoration to active duty and, rather, that you be separated as soon as possible because you had stated that you could “never adjust to military life” and would continue to absent yourself. Prior to returning home on appellate leave, you received a separation physical which included a psychiatric evaluation. Appellate review of your trial proceedings was completed, clemency was denied, and your bad conduct discharge was effected on 3 August 1978.

Your previous application to the Board was considered on 10 June 2019, in which you contended that mitigating circumstances regarding your discharge were not considered and that the circumstances of your discharge were affected by an undiagnosed medical condition and family emergencies beyond your control.

With respect to your application for reconsideration, the Board carefully weighed all potentially mitigating factors, such as your desire to upgrade your discharge and your contentions through counsel that you suffered several disability conditions during your military service which either resulted from or were exacerbated during your initial training and that family issues, to include your grandmothers terminal illness, led to your UAs. Additionally, you believe that your command should have worked more extensively to determine the underlying reasons for your UAs and should have sought to rehabilitate you, should have provided proper medical care for your injuries, and should have avoided placing you in situations which might result in additional UAs following your first SPCM.

Because you contend that a mental health (MH) condition affected your discharge, the Board also considered the AO, which noted that you had no diagnosed mental health condition during your military service and no documented behavior or symptoms indicative of a mental health condition. The AO observed that your post-discharge diagnosis is temporally remote from your military service and that your personal statement lacks sufficient detail to identify the clinical symptoms you purport to have suffered or to establish a nexus with your misconduct. As a result, the AO found insufficient evidence of a mental health condition attributable to your military service or to which your UAs might be attributed. The Board concurred with the AO regarding your mental health conditions and additionally found your in-service statements regarding your religious objection to continued service, your desire not to be restored to active duty, and your stated intention to continue absenting yourself definitive of the underlying cause for your misconduct. The Board additionally considered the letters you submitted as evidence of post-discharge character but, upon review of the totality of available evidence, concluded that the potentially mitigating factors you submitted for consideration are insufficient to outweigh your misconduct evidenced by your two SPCM convictions for a total of nearly 6 months of UAs in less than 30 months of military service. Accordingly, the Board determined that your request does not warrant 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 is attached 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, _____

9/26/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]