



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: 4679-22
Ref: Signature Date



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 3 October 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). As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an Advisory Opinion (AO) on 24 August 2022. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues 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 U.S Marine Corps and began a period of active duty on 30 December 1968. On 16 May 1969, you received nonjudicial punishment (NJP) for a period of unauthorized absence (UA) which lasted 16 days until you surrendered. From 2 June 1969 to 11 June 1969, you were UA for nine days which ended in your apprehension. Per your report of return or apprehension of deserter documents that you stated you went UA because of family problems. On 13 January 1970, you were arrested by civil authorities of New Jersey and charged with robbery for forcibly taking \$500.00 and two checks amounting to \$293.00 from a civilian. You were subsequently convicted and sentenced to a five year maximum term. On 15 September 1970, you were notified of your impending administrative separation by reason of Conviction by Civil Authorities where you elected your right to consult with military counsel and have your case heard before an administrative discharge board. On 18 December 1970, an administrative discharge board was held and found, by a vote of 3-0, that you committed misconduct, and recommended you be discharged with an Other Than Honorable (OTH) characterization of service for misconduct by reason of civil conviction. On 22 December 1970, a staff judge advocate's (SJA's) review determined your proceedings were correct in law and fact. The review documents that you were represented by civilian counsel during your civil trial and were fully advised of your rights. If further captures, although you were incarcerated and unable to attend your administrative separation hearing, you were represented by certified counsel during the process. On 29 December 1970, the separation authority directed you be discharged with an OTH due to civilian conviction. On 12 January 1971, you were so discharged.

On 17 August 1977, your case was reviewed by the Special Discharge Review Program and denied. On 27 June 1978, the Naval Discharge Review Board (NDRB) also denied your request for a discharge upgrade. During this hearing, you admitted to committing the aforementioned robbery to obtain drugs. You further stated you attempted to cash the stolen checks the next day when you were apprehended by the police.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, your desire to upgrade your discharge in order to obtain Department of Veterans Affairs (VA) benefits and contentions that you incurred PTSD and mental health concerns during military service. In addition, you raise new arguments that you were arrested and taken to a precinct for attempting to cash a check for your friend not knowing the check was stolen. Further, you contend that you were called racial slurs, assaulted by the police, and denied due process. Finally, you add that you requested to deploy to Vietnam but were discharged. For purposes of clemency consideration, the Board noted you provided advocacy letters but no supporting documentation describing post-service accomplishments.

Based on your assertions that you incurred PTSD and other mental health concerns during military service, which might have mitigated your discharge character of service, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an 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. He has provided no

medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct, particularly as it is inconsistent with previous statements and his service record.

The AO concluded, “it is my considered clinical opinion there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct may be attributed to PTSD or another mental health condition.”

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 NJP and civil conviction, 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. Further, the Board noted you provided no evidence to substantiate your contentions and some are directly contradicted by your narrative to the NDRB in 1978. Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans’ benefits, or enhancing educational or employment opportunities. Finally, the Board concurred with the AO that there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service or your misconduct. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Marine and continues to warrant an OTH characterization. Even in light of the Wilkie Memo and reviewing the record holistically, 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.

Sincerely,

10/21/2022

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