



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. 6992-22

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 30 January 2023. 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You enlisted in the Marine Corps and began a period of active duty on 24 July 1968. On 11 March 1969, you were convicted by the Superior Court of the State of █ on charges of Grand Theft Auto, and sentenced to 30 days in civilian county jail. On 11 March 1969, you received Non-judicial Punishment (NJP) for violating Uniform Code of Military Justice (UCMJ) Article 92, for failure to appear at your court date as ordered and for Article 86, for two periods of unauthorized absence (UA) from your unit totaling 16 days. On 19 May 1969, you were taken

to your second NJP for violating UCMJ Article 86, for a 34-day period of UA from your unit. You did not appeal either NJP.

From 6 August 1969 to 5 November 1969, you participated in operations against the insurgent communist forces at Dong Ha, Vietnam. You were awarded the Vietnam Service Medal on 5 August 1969. On 14 September 1969, while deployed, you received your third NJP for violating UCMJ Article 113, for sleeping while on post as a sentinel.

On 14 May 1970, you received your fourth and final NJP for violating UCMJ Article 86, for a 4-day period of UA from your unit. On 6 July 1970, your commanding officer referred Special Court Martial (SPCM) charges against you for violating of UCMJ Article 86, for a period of UA, Article 134, for wrongful possession of a liberty pass and escaping correctional custody, and Article 90, for disobedience by not changing into the proper uniform as directed. That same day, in accordance with MARCORSEPMAN 6021, you requested administrative discharge for the good of the service in lieu of trial by court martial (SILT). After consulting with qualified counsel, you acknowledged your rights and were informed that if your discharge was under Other Than Honorable (OTH) conditions, you may be deprived of veteran's benefits and may encounter substantial prejudice in civilian life. Your commanding officer accepted your SILT request, directing your administrative discharge from the service with an OTH characterization of service. On 6 August 1970, you were discharged from the Marine Corps by reason of "Request for Discharge for the Good of the Service" with an OTH characterization of service and a "RE-4" reenlistment code.

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: (a) your desire to upgrade your discharge character of service, (b) your assertion that you were suffering from undiagnosed PTSD due to your time in Vietnam, and (c) the impact of your mental health on your conduct during service. For purposes of clemency and equity consideration, the Board noted that you provided portions of your service records and documents from the Department of Veteran's Affairs.

In your petition, you explain that you have been suffering from PTSD symptoms since your deployment to Vietnam is 1969. In support of your request, you submitted evidence of a March 2021 diagnosis of PTSD from a civilian mental health provider attributed to Vietnam combat exposure. As part of the Board's review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 30 November 2022. The AO noted 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. Post-service, he has received a diagnosis of PTSD from a civilian mental health provider that is temporally remote to his military service and has been attributed to combat exposure. Unfortunately, his personal statement is not sufficiently detailed to

establish clinical symptoms during military service or provide a nexus with his misconduct, particularly as he denies much of the misconduct and some of his misconduct occurred prior to his deployment to Vietnam. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, "it is my considered clinical opinion here is post-service evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to PTSD."

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your four NJP and SPCM charges, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your repeated misconduct and its impact on the mission. The Board highlighted that you requested separation in lieu of trial by court martial, thereby avoiding a possible court martial conviction and punitive discharge. The separation authority already granted you clemency by accepting your separation in lieu of trial by court martial. In your request, you acknowledged that you could receive an undesirable discharge under OTH conditions and the potential impact that such characterization could have on your future. You state that under "Article 31, Uniform Code of Military Justice, having been read and explained to me and with full understanding of my rights, I hereby request discharge for the good of the service." You also consulted with qualified counsel and declared "I am entirely satisfied with his advice." The Board noted that you argue that some of the charges on the SPCM charge sheet are incorrect, however, the Board highlighted that you waived your right to put on a case in your defense by submitting your separation request nor did that weight on the Board's conclusion.

In making this finding, the Board concurred with the AO that although there is post-service evidence of PTSD that may be attributed to military service, there is insufficient evidence that there is a nexus between your misconduct and the mental health condition. Your misconduct began almost immediately after your enlistment, spanned your entire term of service, and your civilian conviction and two of your four NJPs occurred prior to your deployment to Vietnam. Throughout the disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. Further, your SILT request does not mention mental health concerns or the disclosure of symptoms that would have negatively impacted your conduct. The Board determined the record clearly reflected that your active duty misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should otherwise not be held accountable for your actions.

Finally, 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. As a result, the Board determined your conduct constituted a significant departure from that expected of a Marine and continues to warrant an OTH characterization. While the Board carefully considered the evidence you submitted in mitigation, 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 granting you the relief you requested or granting relief as a matter of clemency or equity. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. 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,

2/6/2023

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Executive Director

Signed by: █