



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. 9332-22
Ref: Signature Date



Dear Petitioner:

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 28 April 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 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, but did not.

You enlisted in the Navy as a minor with parental consent, having completed the highest education of grade 8, and began a period of active duty on 28 July 1965. Nearing the end of your first year of service, on 25 March 1966, you were subject to nonjudicial punishment (NJP) for violations of Article 86, failure to be at your appointed place of duty, and Article 92, dereliction in the performance of duty in that you would not relieve the watch when directed to do so by proper authority. You subsequently absented yourself from 19 - 21 October 1966, for which you were subject to a second NJP for another violation of Article 86. You then absented yourself on two additional occasions from 5 April 1967 - 6 May 1967, during which you missed movement, were apprehended by civil authorities, and issued a return travel ticket in conjunction with orders

to return to your duty station. However, you failed to report as directed and remained absent from 17 May 1967 until your voluntary surrender on 25 October 1967, at which time you were placed into pre-trial confinement. On 28 November 1967, you pled guilty before Special Court-Martial (SPCM) for two specifications of violation of Article 86 for your unauthorized absences (UAs) and a violation of Article 92 for failure to obey a lawful order directing your return under technical arrest orders. You were sentenced to 6 months' confinement at hard labor, reduction to E-1, forfeitures of pay, and a Bad Conduct Discharge; however, the convening authority excluded forfeitures from your sentence and permitted you to remain in a full pay status. The findings and sentence of your SPCM were affirmed during Article 66 review, and you elected to waive restoration to active duty, providing a statement that you did not want to go back to duty because you "couldn't make it" since your wife was pregnant. While confined, you received a neuropsychiatric evaluation which diagnosed you with having an immature personality. Your BCD was approved on 26 February 1968, and you were discharged on 12 March 1968 with a total time lost of 345 days due to UA.

The Board carefully weighed all potentially mitigating factors, to include your desire to upgrade your discharge and your contentions of clemency factors in regard to having otherwise served honorably, to include two tours in the Vietnam War, and the reason for your UA being to get married and care for your pregnant wife, after which you voluntarily returned; the Board also considered your contentions with respect to your current incapacitation due to dementia, which required your son to assist you in submitting your application. Because you indicated that a mental health condition may have affected the circumstances of your misconduct, the Board also considered the AO, which noted that you were referred for a psychological evaluation and properly evaluated during your enlistment with a diagnosis of personality disorder [immature personality] based on observed behaviors and performance during your period of service. The AO observed that you unfortunately provided no other evidence in support of your claims of another mental health condition, and your personal statement during your military service indicates that your decision to go UA was due to personal and family stressors. As a result, the AO's clinical opinion found insufficient evidence of a mental health condition that may be attributed to your military service and insufficient evidence to attribute your misconduct to a mental health condition other than your diagnosed personality disorder. The Board concurred with the AO in regard to your contention that a mental health condition contributed to or mitigated your misconduct. With respect to your contentions that your current condition merits consideration of clemency, the Board noted favorable factors relevant under the Wilkie memo to include: the length of time since your misconduct; your relative youth and medically documented immaturity at that time; the limited severity of your misconduct and victimless nature thereof; the connection between your absences and your concern for your wife and unborn child, which appear to have motivated the convening authority's atypical decision that you remain in a pay status during your 6 month period of confinement, as documented during the review of your SPCM; and, your contentions that you currently suffer from critical illness. To the extent that you contend your dementia is of critical severity and merits relief on the basis of clemency, however, the Board found insufficient evidence of medical diagnosis of your condition. As a result, the Board concluded that the potentially mitigating factors you submitted for consideration are insufficient at this time to outweigh the misconduct which resulted in your punitive discharge. 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,

5/9/2023

