



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. 5142-23
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.

Because your application was submitted with new contentions not previously considered, the Board found it in the interest of justice to review your application. Your current request has been carefully examined by a three-member panel, sitting in executive session on 26 January 2024. 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, applicable statutes, regulations, and policies, to include the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo), the 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD)/mental health condition (MHC) (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. Although you were provided an opportunity to respond to the AO, you chose not to do so.

You enlisted in the Marine Corps and commenced active duty on 7 January 1969. Between 24 September and 22 October 1969, you completed a period of unauthorized absence (UA) ended by your surrender. On 7 April 1970, you were convicted at Special Court-Martial (SPCM) of committing an assault upon another Marine by aiming at his body and firing three rounds at his feet with a pistol. As part of your sentence, you were sentenced to confinement at hard labor for four months, and awarded a Bad Conduct Discharge (BCD). You were discharged, following confinement, on 28 December 1970.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request on 2 March 1978, based on their determination that your discharge was proper as issued. Similarly, your prior application to this Board was denied on 10 October 2017.

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 change your discharge characterization of service and your contentions that you have been diagnosed with anxiety/depression disorder, have been dealing with anxiety and depression since your service in Vietnam, and that your actions leading to your court-martial were triggered by your mental state, which resulted from an undiagnosed mental health issue. For purposes of clemency and equity consideration, the Board considered the supporting medical documentation you provided with your application, but noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

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 14 December 2023, which was previously provided to you. The AO noted in pertinent part:

The Petitioner submitted one note from Memorial Medical Clinic that notes a diagnosis of Generalized Anxiety Disorder in February 2023. There is no evidence that the Petitioner was diagnosed with a mental health condition or suffered from PTSD while in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He submitted evidence of a temporally remote post-service diagnosis of Generalized Anxiety Disorder, however the etiology or rationale thereof was not provided. His personal statement is not sufficiently detailed to establish clinical symptoms or provide a 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, "it is my considered clinical opinion 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."

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 SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved the firing of a deadly weapon at another Marine. The Board also considered the likely negative impact your misconduct had on the good order and discipline of your command.

Additionally, the Board concurred with the AO and determined that there is no evidence that you were diagnosed with a mental health condition or suffered from PTSD while in military service,

or that you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition at that time. The Board agreed that the available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with your misconduct. Further, the Board 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.

As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant a BCD characterization. While the Board carefully considered the evidence you submitted in mitigation, they also noted you provided no documentation demonstrating your conduct or accomplishments since discharge to support the Board granting relief even as a matter of clemency. On this matter, an updated personal statement, advocacy letters, or other documentation relating to your life since discharge may be helpful. Therefore, even in light of the Kurta, Hagel, and Wilkie Memos and reviewing the record liberally and 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 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,

2/13/2024

