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

[redacted]
Docket No. 10406-23
9385-22
Ref: Signature Date

[redacted]

Dear [redacted]:

This is in reference to your application for correction of your father-in law's naval record pursuant to Section 1552 of Title 10, United States Code. After careful review and consideration of all of the evidence of record, the Board for Correction of Naval Records [hereinafter referred to as the Board] continued to find insufficient evidence to establish the existence of any probable material error or injustice warranting relief. Accordingly, your application has been denied.

Your current request was reviewed by a three-member panel of the Board, sitting in executive session, on 18 December 2023 in accordance with the administrative regulations and procedures applicable to the proceedings of this Board. The names and votes of the panel members will be furnished upon request. Documentary material considered by the Board included your application together with all material submitted in support thereof; the case file for Docket No. 9385-22; relevant portions of your father-in-law's naval record; and applicable statutes, regulations, and policies, to include the 25 August 2018 clarifying guidance from the person performing the duties of the Under Secretary of Defense for Personnel and Readiness (USD (P&R) regarding requests by Veterans for modification of their discharge due to mental health conditions (Kurta Memo), and the 25 July 2018 guidance from the USD (P&R) regarding equity, injustice, or clemency determinations (Wilkie Memo).

The Board determined that your personal appearance, with or without counsel, would not materially aid in their understanding of the issues involved in your case. Accordingly, the Board determined that a personal appearance was not necessary and considered your case based upon the evidence of record.

The evidence reflects that your father-in-law enlisted in the Marine Corps and entered active duty on 8 June 1967. On 22 July 1968, he was convicted by a summary court-martial (SCM) of two extended periods of unauthorized absences (UA), in violation of Article 86, Uniform Code

of Military Justice (UCMJ),[1] and for breaking restriction in violation of Article 134, UCMJ.[2] At the time of these offenses, he was still engaged in initial entry training for Marine Corps recruits. He was sentenced to be confined at hard labor for one month and to forfeit $50 pay per month for one month, but the adjudged punishment to confinement was suspended.

On 2 September 1968, approximately three months following his return from his second period of UA, your father-in-law arrived at [redacted] in the [redacted] On 15 February 1969, he was hospitalized at the U.S. Naval Hospital at [redacted] for emotional distress. He underwent a medical board on 10 March 1969, which diagnosed him with Emotionally Unstable Personality. The Medical Board Report noted that he "arises screaming and must be slapped awake. He is not able to recall the content of his nightmares. His company commander described [your father-in-law] as being a very hard working, conscientious Marine. Notes accompanying the patient documented his endangering his unit and himself under combat conditions." The medical board recommended him for a six-month period of limited duty. As a result, your father-in-law returned to the United States on 20 April 1969.

On 4 July 1969, your father-in-law commenced a 167-day period of UA until 18 December 1969. On 5 February 1970, he requested discharge for the good of the service in lieu of trial by court-martial for violating Article 86, UCMJ. That request was approved by the convening authority on 20 February 1970, and he was discharged for the good of the service, with an undesirable discharge, on 4 March 1970.

Although you provided no new medical evidence with your present request for reconsideration of the Board's decision in Docket No. 9385-22, the Board reconsidered its previous decision in that case with regard to your father-in-law's request for a medical retirement and the contribution of his claimed medical condition to the misconduct for which he was discharged. Based upon this reconsideration, the Board confirmed its previous determinations in those regards based upon the evidence presented. There was simply insufficient evidence presented to establish that your father-in-law qualified for a medical retirement. Additionally, even applying liberal consideration, there was insufficient evidence to conclude that his claimed post-traumatic stress disorder (PTSD) condition, for which he provided no evidence of his post-service diagnosis, contributed to your father-in-law's misconduct, as his post-deployment misconduct was similar to his pre-deployment misconduct which you have attributed to his desire to provide for his family. The Board recognized that your present reconsideration request did not include new medical evidence in order to enable the expedited review requested, so you are invited to submit any such new evidence you may obtain in a future reconsideration request.

Upon reconsideration, the Board also considered the totality of the circumstances to determine whether equitable relief is warranted in accordance with the guidance of the Wilkie Memo. In this regard, the Board, considered, among other factors, your father-in-law's voluntary

[1] The record reflects that your father-in-law was UA for a period of 56 days from 1 October 1967 to 27 November 1967, and for 179 days from 4 December 1967 to 1 June 1968. The first of these two UAs was terminated only upon his apprehension by civilian law enforcement authorities.
[2] The charge of breaking restriction in violation of Article 134, UCMJ, was related to the initiation of your father-in-law's second period of UA beginning on 4 December 1967.

enlistment in the Marine Corps during a time of war, and his combat service in the RVN; that his company commander described your father-in-law as a "very hard working, conscientious Marine"; that he suffered from and recently succumbed to Parkinson's Disease, which you attribute to his exposure to Agent Orange; that your father-in-law suffered from nightmares while deployed in the RVN, which the medical board attributed to the stress of his situation and a personality disorder; the adverse circumstances of his first marriage and the emotional impact that that may have had upon him at the time; your claim that your father-in-law's first two UAs were due to his desire to care for his family; his long post-service record of providing for his family despite the challenges and stigma presented by his undesirable discharge; the character references provided with this application; the specific provisions of the Wilkie Memo cited in your application; your father-in-law's relative youth and immaturity at the time of his misconduct, which was likely exacerbated by his relative lack of education for reasons beyond his control; and the passage of time since his discharge. Even considering these mitigating factors, however, the Board did not believe that equitable relief was warranted in the interests of justice. While the Board found your father's post-service record to be admirable and certainly worthy of favorable consideration, it unfortunately found that post-service record and the other factors weighing in favor of equitable relief to be insufficient to overcome the severity of his misconduct. Your father-in-law was UA for 402 of the 1,000 days that he spent in the Marine Corps, and he would have been absent even longer if his first UA had not been terminated by apprehension. There simply is no way to characterize such service as anything but undesirable, and the matters offered for clemency purposes were not sufficient to justify recharacterizing his service. Additionally, the Board noted that your father-in-law already received significant clemency from the Marine Corps. After being convicted of two UAs, one of which was terminated by apprehension, of a combined period of 235 days, his sentence to confinement was suspended. As a result, the consequences of such serious misconduct consisted only of a $50 forfeiture. The Board also found that your father-in-law received generous consideration in the approval of his request for discharge in lieu of trial by court-martial, as he almost certainly would have faced significant jail time and the additional life-long stigma of a federal felony conviction if that request was disapproved. The extremely generous clemency and consideration already provided by the Marine Corps for his severe misconduct further offset some of the mitigating factors weighing in favor of relief. Accordingly, the Board unfortunately found that equitable relief is not warranted given the totality of the circumstances.

While I recognize that this may not offer any comfort under the circumstances, the Board members did wish to express their deepest condolences to you and the rest of your family for the recent loss of your father-in-law. It also hoped that the Department of Veterans Affairs would find a way to provide the burial benefits that this decision unfortunately could not provide.

As you are aware, the scope of this reconsideration was limited to the matters offered for clemency purposes in order to facilitate reconsideration on the expedited schedule requested. You are entitled, and invited, to request further reconsideration from the Board upon the submission of new matters not previously considered. This will require you to complete and submit a new DD Form 149. 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,

12/18/2023

[redacted]