



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. 3296-23
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.

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 13 December 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.

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 Marine Corps and began a period of active duty on 19 January 1967. You participated in Vietnam operations from 21 March 1968 to 8 March 1969. On 29 March 1969, you received non-judicial punishment (NJP) for two specifications of unauthorized absence (UA) totaling 46 days. On 19 May 1969, you received a second NJP for UA. Subsequently, you were UA from 15 July 1969 to 26 August 1969, 31 August 1969 to 4 September 1969, and

5 September 1969 to 8 September 1969, totaling 49 days. On 7 October 1969, you commenced another period of UA. On 1 January 1970, you were apprehended by civilian authorities. On 16 January 1970, while under custody, you were delivered to ██████████ Hospital, ██████████ for medical treatment. On 17 January 1970, while being treated, you escaped custody. On 4 February 1970, you were declared a deserter. The record shows on 6 April 1970, you were apprehended by civilian authorities in ██████████. On 22 May 1970, you were convicted by civilian authorities of forgery and sentenced to not less than two years or more than three years of confinement in ██████████ Department of Corrections.

On 16 July 1970, you were notified that you were being recommended for administrative discharge from the Marine Corps by reason of misconduct due to civilian conviction. You waived your procedural right to consult with military counsel, and to present your case to an administrative discharge board (ADB). Your commanding officer (CO) forwarded your administrative separation package to the separation authority (SA) recommending your administrative discharge from the Marine Corps by reason of misconduct due to civilian conviction with an Other Than Honorable (OTH) characterization of service. The SA approved the recommendation for administrative discharge and directed your OTH discharge from the Marine Corps by reason of misconduct due to civilian conviction. On 9 November 1970, you were so discharged. Post-discharge, you applied to the Naval Discharge Review Board (NDRB). On 10 May 1985, the NDRB denied your application after determining your discharge was proper as issued.

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 character of service and contentions that: (1) prior to leaving for ██████████ you were an upstanding Marine and did not get into trouble, (2) your decline in service was directly related to PTSD from your time spent deployed to ██████████ (3) as a 18/19 year old young man you were not equipped to deal with the things that you had seen and done while in ██████████ (4) all of your wrong doings occurred upon your return home from ██████████ and (5) you did not receive any care for what you now realize was PTSD. For purposes of clemency and equity consideration, the Board noted you provided advocacy letters, health care documents, and documents from your service record but no supporting documentation describing post-service accomplishments.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 23 October 2023. 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. Post-service, the VA has diagnosed him with a trauma-related mental health condition, although there is no formal diagnosis of PTSD. It is possible that his UA could be attributed to unrecognized symptoms of PTSD avoidance. It is difficult to attribute his civilian misconduct to symptoms of PTSD. 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 clinical opinion there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is post-service evidence from the VA of a trauma-related mental health condition that may be attributed to military service. There is insufficient evidence to attribute all of his misconduct to a trauma-related 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 multiple periods of UA, NJPs, and civilian conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded your misconduct showed a complete disregard for military authority and regulations. The Board also considered the negative impact your conduct likely had on the good order and discipline of your unit, and the discrediting nature of your civilian conviction. Additionally, the Board found that your misconduct was intentional and made you unsuitable for continued naval service. Further, the Board concurred with the AO that while there is post-service evidence from the VA of a trauma-related mental health condition that may be attributed to military service, there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service, and there is insufficient evidence to attribute all of your misconduct to a trauma-related mental health condition. As the AO explained, there is no evidence that you were diagnosed with a mental health condition in military service, or that you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Therefore, 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 an OTH characterization. While the Board carefully considered the evidence you submitted in mitigation, 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 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,

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1/8/2024
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