



**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. 4685-24  
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 1 November 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 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). Additionally, the Board also considered an advisory opinion (AO) furnished by qualified mental health provider. Although you were provided an opportunity to respond to the AO, 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 U.S. Marine Corps and began a period of active duty service on 28 April 1966. Your pre-enlistment physical examination, on 17 March 1966, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms.

On or about 26 February 1967, you arrived and disembarked at ██████████. While in ██████████, you participated in several operations against enemy forces. On 18 March 1968, you departed ██████████ and ultimately arrived at ██████████ on 20 March 1968.

On the evening of 7 June 1968, you were arrested by civilian authorities of ██████████ for armed robbery. According to civilian arrest reports in your service record, you had held up two (2) separate stores at gunpoint with a .38 caliber pistol that evening, and that you had acted in concert with another person. While in civilian custody, you admitted to both of the robberies, as well as to a number of other recent robberies (approximately five or six) committed in the same area. On 10 June 1968, you commenced a period of unauthorized absence (UA) when you were detained by civilian authorities in the ██████████ awaiting trial and sentencing for multiple counts of armed robbery.<sup>1</sup>

On or about 5 July 1968, pursuant to your guilty pleas, you were convicted in the Superior Court of the State of ██████████ of two (2) separate felony counts of armed robbery. The Court sentenced you to five years' imprisonment on each count, with the sentences to run concurrently.

On 7 October 1968 your Marine Corps command notified you that you were being processed for an administrative discharge by reason of misconduct due to a civilian conviction for armed robbery. On 1 November 1968, you elected in writing your right to request an administrative separation board (Adsep Board) despite being incarcerated at such time.

On 30 December 1968, an Adsep Board convened in your case. You were not present during the Adsep Board hearing due to your civilian incarceration. Following the presentation of evidence and any witness testimony, the Adsep Board members unanimously recommended that you be separated from the Marine Corps with an under Other Than Honorable conditions (OTH) characterization of service. Ultimately, on 15 March 1969, you were separated from the Marine Corps for misconduct with an OTH discharge characterization and were assigned an RE-4 reentry code.<sup>2</sup>

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 for a discharge upgrade and contentions that: (a) you entered the Marine Corps with no record of PTSD or other mental health issues, (b) although you were an exemplary Marine and non-commissioned officer (NCO)

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<sup>1</sup> The Board noted that each day Petitioner spent either in civilian custody/confinement was in a UA status for Marine Corps purposes on a day-for-day basis.

<sup>2</sup> The Board noted that following Petitioner's arrest and civilian pretrial confinement, he never returned to military custody prior to his ultimate administrative separation on 15 March 1969, which resulted in a UA period lasting 279 days.

who fought valiantly in the Vietnam War during the Tet Offensive, you struggled with undiagnosed PTSD upon your return from combat, (c) shortly after your return to ██████████ after experiencing extensive combat in Vietnam, you were convicted of two armed robberies, which resulted in your imprisonment in a civilian California penitentiary and ultimately, led to your discharge from the USMC with an OTH characterization, (d) your discharge is unjust because your mental health was never considered during your discharge, despite the fact that you exhibited symptomology of PTSD at the time of your discharge, (e) you respectfully requests that this Board reexamine your service record and the circumstances of his discharge in light of certain factors, and additionally request that the Board review the injustice associated with your case, (f) you were an exemplary Marine despite the highly traumatic combat events you experienced and witnessed during your service in the Vietnam War, (g) your subsequent misconduct and discharge were directly attributable to your PTSD resulting from the harrowing combat experiences you endured in service of your country, (h) in light of your dedicated and meritorious service, it is evident that the failure to consider your mental health in relation to your misconduct, coupled with outdated medical out-processing practices during the Vietnam Era, necessitates the reevaluation of your discharge status, (i) such a reclassification is not only a matter of justice but also an acknowledgment of your rightful entitlement to the benefits and honors associated with an Honorable discharge, and (j) it is necessary to take this vital step to reinstate your standing in recognition of the sacrifices and contributions your made during your service, and by doing so, ensuring that you are no longer left behind, as you have been for 56 years, and that you receive the rightful recognition and support you deserve. For purposes of clemency and equity consideration, the Board considered the totality of the evidence you provided in support of your application.

A licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records and issued an AO dated 6 September 2024. As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

Review of records indicates that in March 1968, he was referred to psychiatry from his CO, as he was "recently involved in a legal matter and became emotionally upset." He was diagnosed with "Situational Stress Reaction."

He submitted a psychological evaluation dated September 2018 that notes diagnosis of PTSD. He submitted a character letter from his girlfriend in support of his claim. He submitted VA Disability Benefits Questionnaire (DBQ) whereby the psychologist diagnosed him with PTSD based on his account of several traumatic events that occurred during his tour in Vietnam. There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, or that he exhibited any symptoms of a mental health condition. The nature and severity of his misconduct exceeds that of what would be expected due to PTSD symptoms alone. His statement is not sufficiently detailed to provide a nexus with his misconduct.

The Ph.D. concluded, "it is my considered clinical opinion there is sufficient evidence of a mental health condition (PTSD) 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 these potentially mitigating factors were insufficient to warrant relief. In accordance with the Hagel, Kurta, and Wilkie Memos, the Board gave liberal and special consideration to your record of service and your contentions about any traumatic or stressful events you experienced and their possible adverse impact on your service. However, the Board concluded that there was no convincing evidence of any nexus between any mental health conditions and/or related symptoms and your misconduct and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to mental health-related conditions or symptoms. Moreover, the Board concluded that your civilian criminal charges of armed robbery forming the underlying basis of your OTH discharge were not the type of misconduct that would be excused or mitigated by any mental health conditions even with liberal consideration. Even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your cumulative misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that your 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 not be held accountable for your actions. Additionally, 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.

The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Marine.

As a result, the Board determined that there was no impropriety or inequity in your discharge and concluded that your misconduct and disregard for good order in discipline clearly merited your discharge. 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 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,

11/19/2024

