



In 2019, you petitioned this Board seeking an upgrade to your discharge characterization. You contended that the charges that led to your discharge were not true. On █, this Board denied your petition.

The Board carefully considered all potentially mitigating factors in your current petition to determine whether the interests of justice warrant relief in your case including in accordance with the Wilkie Memo. You contend in your petition, as you did in your prior petition, that you were innocent of the charges that led to your discharge. You also contend that you suffered from a mental health condition while on active duty, which serves to mitigate your misconduct.

In connection with your assertion that you suffered from a mental health condition, the Board requested, and reviewed, the AO. The AO reviewed your service record as well as your petition and the matters that you submitted, and determined:

Petitioner's OMPF did not contain evidence of a diagnosis of or reported psychological symptoms/behavioral changes indicative of a mental health condition. Evidence submitted by Petitioner supported a post-discharge diagnosis of PTSD; however, it did not provide sufficient evidence of markers of a mental health condition during his military service. Petitioner does not attribute his misconduct (stealing) to a mental health condition or the circumstances that led to his request for discharge. In fact, the evidence submitted by Petitioner illustrates his trauma was the discharge, as he felt he was falsely accused and innocent, and his symptoms interfered with his ability to function after his discharge.

The AO concluded, "it is my considered clinical opinion the preponderance of available objective evidence failed to establish Petitioner suffered from a mental health condition at the time of his military service or his in-service misconduct could be mitigated by a mental health condition."

The Board reviewed the totality of the circumstances concerning your discharge and characterization of service. Based upon its review, the Board concluded the potentially mitigating factors that you raised were insufficient to warrant relief. With respect to your contention relating to a mental health condition, the Board concurred with the findings of the AO, finding that the objective evidence failed to establish that you suffered from a mental health condition that may mitigate your in-service misconduct. With respect to your contention that your discharge was based on false allegations, the Board noted that there is no evidence in the record to support your contention. In balancing the positive aspects of your service with the misconduct that led to your discharge, which included both a civilian conviction by a foreign government, in addition to your request for discharge in lieu of trial by court-martial, the Board did not find an error or injustice in your discharge or characterization of service. Thus, the Board concluded that your requested relief is not warranted.

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 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,

1/28/2022

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Executive Director

Signed by █