



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

█  
Docket No: 6346-21  
Ref: Signature Date



Dear █:

This is in reference to your reconsideration request received on 31 August 2021. You previously petitioned the Board for Correction of Naval Records (Board) and were advised that your application had been denied. Your case was reconsidered in accordance with Board procedures that conform to *Lispman v. Sec'y of the Army*, 335 F. Supp. 2d 48 (D.D.C. 2004). After careful and conscientious consideration of the entire record, the Board for Correction of Naval Records (Board) found the evidence submitted was insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Because your application was submitted with new evidence 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 of the Board, sitting in executive session on 3 January 2022. 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, and 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), 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 considered the advisory opinion (AO) furnished by qualified mental health provider dated 31 October 2021, which was previously provided to you.

As part of the Board's review, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO regarding your assertions that you had mental deficiencies during your service, which led to your inability to adjust to the Marine Corps, to include a history of depression, impulsive actions, alcohol abuse, anxiety, and cluster headaches. You further contend you were able to address your mental problems post-military and receive treatment, which is still ongoing. The AO noted your contentions and opined you did not describe a causal relationship between your contended mental health condition and

occupational impairment or a nexus between your misconduct and any mental health condition. The AO also captured you provided a neurological exam of 21 February 2020, for a diagnosis of Chronic Cluster Headache, which listed “anxiety and depression” in the assessment history. However, the documents provided did not include a clinical history onset, the type of symptoms comprising the diagnosis of depression, or a description of the contended mental health condition’s effect on your military occupational functioning and/or its relationship to your in-service misconduct. Additionally, the AO opined your in-service record revealed an enlistment physical examination in which you described your health as “good” and denied any history of pre-enlistment mental health or substance abuse issues. Lastly, the remainder of your in-service records did not contain any other diagnosed mental health conditions, symptoms, or behaviors indicative of an additional mental health condition.

On 17 November 2021, your rebuttal in the form of additional medical documents were received. On 8 December 2021, the AO opined provided that, unfortunately, the rebuttal documents provided did not correlate your depression to military service, detail the onset and types of symptoms (or whether they existed during your military career), or show nexus with your misconduct. As such the AO stated the original advisory opinion stands as originally written.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to, your desire to upgrade your discharge and your contentions noted above. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief. Specifically, the Board determined that your repeated misconduct, as evidenced by your special court-martial for an unauthorized absence (UA) totaling 190 days and non-judicial punishment for being UA from your appointed place of duty, outweighed these mitigating factors. 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,

1/20/2022

█

Executive Director

Signed by: █