



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: 7194-22
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.

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 currently request has been carefully examined by a three-member panel of the Board, sitting in executive session on 29 August 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), 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 Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo). In addition, the Board reviewed an Advisory Opinion (AO) provided by a qualified mental health professional on 19 July 2022 and your rebuttal response to the AO.

Your previously applied to this Board for a disability discharge and characterization upgrade. The Board denied your requests on 1 April 2016 and 11 April 2019.

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 contentions that you were diagnosed with TBI and experienced PTSD while in service. You assert that you suffered head injuries during basic training when you were assaulted by your drill instructor and a TBI in a

car accident. For purposes of clemency consideration, the Board noted you provided advocacy letters but no supporting documentation describing post-service accomplishments.

Based on your assertions that you incurred TBI and MHC during military service, which might have mitigated the misconduct that led to your discharge character of service, a qualified mental health professional reviewed your request for correction to your record and provided the Board with the AO. The AO stated in pertinent part:

Petitioner's available in-service personnel and medical records did not contain a diagnosis of PTSD, but did contain a diagnosis of concussion for a car accident incurred after command approval of OTH discharge from the service. He was psychiatrically evaluated twice with the only diagnosis documented being personality disorders with recommendations for administrative separation. Other than one clinic note after his motor vehicle accident, in which he complained of a headache, there were no other documented instances where Petitioner complained of, or exhibited symptoms indicative of PTSD, residual symptoms of TBI, or other mental health conditions that impaired his occupational functioning or responsibility for his actions. Post-discharge, he presented evidence of diagnoses of PTSD, TBI, and Neurocognitive Disorder with a nexus established to his car accident at the end of his military service. However, the motor vehicle accident that contributed to his PTSD and TBI conditions occurred after his in-service misconduct and cannot be seen as mitigation for the misconduct that led to his OTH discharge.

The AO concluded, "[b]ased on the available evidence, it is my clinical opinion that there is sufficient objective evidence to support Petitioner's contention of PTSD and TBI attributable to military service. However, Petitioner's in-service misconduct occurred before the motor vehicle accident that likely caused PTSD and TBI that could be attributed to any mental health conditions."

In response to the AO, you provided medical documents listing your current diagnoses.

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your three NJPs and two SPCMs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Further, the Board concurred with the AO that your in-service misconduct could not be attributed to any mental health condition since it occurred prior to the motor vehicle accident that likely caused your PTSD and TBI. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Marine and continues to warrant an OTH characterization. After applying liberal consideration, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting clemency in the form of an upgraded characterization of service. 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,

9/12/2022

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Executive Director

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