



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: 0098-22
Ref: Signature Date

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Dear █:

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 current request has been carefully examined by a three-member panel of the Board, sitting in executive session on 6 June 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 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 an advisory opinion (AO) from a qualified mental health professional, which was previously provided to you. Although you were afforded an opportunity to submit a rebuttal, you did not do so.

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 in order to apply for Department of Veterans Affairs (DVA) benefits and contentions that: (1) "I developed PTSD and other behavioral conditions from my service in █," (2) "I was exposed to horrific acts of violence and agent orange," (3) "I have serious mental issues from my service to my country," (4) "I cannot access my disability benefits," (5) "I served my country in █," and (6) "I developed behavioral and medical conditions due to this service." For purposes of clemency

consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

In connection with your assertion that you suffered from PTSD, the Board requested, and reviewed, an Advisory Opinion (AO) provided by a mental health professional. The AO reviewed your service record as well as your petition and the matters that you submitted. According to the AO:

There is no evidence the Petitioner was diagnosed with a mental health condition during his military service, or that he exhibited psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Throughout his disciplinary processing, there were no concerns raised of a mental health condition requiring evaluation or treatment. Unfortunately, he has provided no post-service medical evidence in support of his mental health claims. The Petitioner's service record provides plausible evidence of combat injuries that could result in PTSD, and his misconduct followed his return from █. It is possible that disobedience, UA, and assault could be attributed to unrecognized symptoms of PTSD. However, his statement in the record proclaim his innocence of the court martial charges, with the exception of the single assault charge. His current statements are not sufficiently detailed to establish a nexus with his misconduct. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) are required to render an alternate opinion.

The AO concluded, "[b]ased on the available evidence, it is my clinical opinion that there is some evidence in the service record that his claimed diagnosis of PTSD could be attributed to military service. There is insufficient evidence that his misconduct could be attributed to PTSD or another mental health condition."

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined the severity of your misconduct, as evidenced by your general court martial, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct that included an assault with intent to commit murder offense and wrongful appropriation of a M-14 rifle. Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating VA benefits, or enhancing educational or employment opportunities. Finally, the Board concurred with the AO and determined there is insufficient evidence that your misconduct could be attributed to PTSD or another mental health condition. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Marine and continues to warrant a Dishonorable Discharge. 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 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,

6/22/2022

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Executive Director

Signed by: █