



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: 0830-22

Ref: Signature Date



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. A three-member panel of the Board, sitting in executive session, considered your application on 15 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 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 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 and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo). The Board also considered an advisory opinion (AO) from a qualified mental health professional dated 15 April 2022, which was previously provided to you. When you did not submit a rebuttal to the AO within 30 days, your case was submitted to the Board for review.

You previously applied to this Board for an upgrade to your characterization of service and were denied on 31 March 2015.

In reviewing your application, the Board considered the totality of the circumstances to determine whether relief is appropriate today in the interests of justice in accordance with guidance provided by the Wilkie Memo. Accordingly, the Board carefully considered all

potentially mitigating factors; these included, but were not limited to, your desire to upgrade your discharge character of service and contentions that you incurred depression and a substance use disorder during your military service that contributed to your misconduct, that if properly diagnosed, you would have received counseling and if necessary, the proper medication, which would have left you, better equipped to combat your issues, and that as the latter part of your service drew closer, your challenges also escalated with anxieties, fear, and nervousness something you have never experienced and you did not know how to cope with your condition. For purposes of clemency consideration, the Board noted you provided advocacy letters but not supporting documentation describing post-service accomplishments.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 15 April 2022. The AO stated in pertinent part:

Despite close psychiatric observation, there is no evidence that he was diagnosed with a mental health condition during military service. Although personal and work stressors were noted, stressors alone are insufficient to establish a mental health diagnosis. Unfortunately, he has provided no post service medical evidence in support of his claims. His current statements are temporally remote from military service and inconsistent with his service record. 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 insufficient evidence of a mental health condition that could be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition."

Based upon this review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by multiple administrative counseling's and five NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded your record of misconduct showed a complete disregard for military authority and regulations. While the Board considered your advocacy letters and commend you for your post-discharge good character, they ultimately concluded that it was insufficient mitigation evidence to outweigh your misconduct. In addition, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to a mental health condition. As a result, the Board determined your conduct constituted a significant departure from that expected of a Sailor 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 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,

7/5/2022

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Executive Director

Signed by: █