

DEPARTMENT OF THE NAVY

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

> Docket No: 1002-22 7818-18

Ref: Signature date



Dear

This is in reference to your application for reconsideration 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 reconsideration request has been depied

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 2 May 2022. The names and votes of the members of the panel will be furnished upon request. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, relevant portions of your naval record, applicable statutes, regulations, and policies to include the 25 July 2018 Under Secretary of Defense Memo on Guidance to Military Discharge Review Boards and Boards for Correction of Military / Naval Records Regarding Equity, Injustice, or Clemency Determinations (Wilkie memo). In addition, the Board considered an advisory opinion (AO) from a qualified mental health professional. You were provided an opportunity to respond to the opinion, but did not.

The Board determined that your personal appearance via video or telephonic, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You presented as new evidence a letter from a Medical Center dated 23 January 2022. The letter states that you are receiving outpatient treatment for opioid use disorder on maintenance therapy, alcohol use disorder in early remission, stimulant use disorder in early remission, cannabis use in early remission, nicotine use disorder, other trauma and stressor related disorder, history of traumatic brain injury, psychosis, and chronic pain. Additionally, you

Docket No: 1002-22

7818-18

argue that you witnessed the torture of a man while on active duty that was the cause of your substance abuse.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 14 March 2022. The AO states in pertinent part:

There is no evidence the Petitioner was diagnosed with a mental health condition during his military service. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. However, his service record does contain behavioral evidence of possible undiagnosed substance use disorders. Post-service, he has received treatment from the VA for multiple substance use disorders; an Other Trauma and Stressor-Related Disorder, which is a mental health condition related to PTSD; and other medical conditions. Unfortunately, the statements from the Petitioner and his medical provider 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 concludes, "[B]ased on the available evidence, it is my clinical opinion that there is insufficient evidence that the Petitioner's has a PTSD diagnosis that could be attributed to military service. There is post-service evidence that other mental health conditions (multiple substance use disorders and an Other Trauma and Stressor-Related Disorder) could be attributed to military service. There is insufficient evidence that his misconduct could be attributed to PTSD or another mental health condition, other than a potential substance use disorder."

In reviewing the circumstances of your separation and characterization of service, 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. After careful review, the Board concluded that your misconduct, as evidenced by your multiple NJPs and misconduct that formed the basis for your good of the service discharge request, outweigh the mitigating factors. Specifically, the Board considered the seriousness of your misconduct, that included drug use and a long term unauthorized absence, and determined it showed a complete disregard for military authority and regulations. In addition, the Board concurred with the AO that there was insufficient evidence to attribute your misconduct to a 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 an OTH characterization. The Board did not find evidence of an error or injustice that warrants upgrading your characterization of service, changing your separation code or the granting of clemency. Accordingly, 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

Docket No: 1002-22

7818-18

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.

