

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

> Docket No: 1548-22 4778-16 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 22 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 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 the advisory opinion (AO) furnished by a qualified mental health professional dated 10 May 2022, and your response to the AO.

The Board determined that your personal appearance, 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 previously applied to this Board for an upgrade to your characterization of service and were denied on 8 February 2017.

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 assertion that your discharge was related to anger issues you had while serving. You further state that since your discharge, you have made significant improvements; you desire an upgrade so that you can qualify for a home with your VA loan to complement your son's disability. For purposes of clemency consideration, the Board noted you provided an advocacy letter; however, you did not provide 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 10 May 2022. The AO stated in pertinent part:

Petitioner's OMPF did not contain evidence of a diagnosis of a mental health condition or reported psychological symptoms/behavioral changes indicative of a diagnosable mental health condition. Petitioner did not provide clarifying information about his purported MHC (i.e., symptoms experienced, diagnosis). Petitioner stated his misconduct was related to anger issues. Although healthy coping skills are important, the lack thereof does not constitute a mental health condition. Additionally, Petitioner's statement at mast provided alternative reasoning for his misconduct (i.e., he requested to be separated).

The AO concluded, "[b]ased on the available evidence, it is my clinical opinion Petitioner's purported mental health condition (MHC) cannot be attributed to military service, nor can his misconduct/behavior be attributed to a MHC."

In response to the AO, you provided a statement in which you argued that "prior to your service you never had anger issues/mental," you do not know whether it came from the shots you received during processing and/or onboard the ship.

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 your two 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. The Board noted your Commanding Officer's comments regarding your unwillingness to work and the difficulties your chain of command experienced in getting you to perform your duties. Therefore, while the Board considered your statement and advocacy letter, they ultimately concluded it was insufficient mitigation evidence to outweigh your misconduct and overall poor performance. Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. Furthermore, the Board concurred with the AO that there is insufficient evidence of a MHC that can be attributed to military service, or that your in-service misconduct could be attributed to a MHC. 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.

7/7/2022 Executive Director

Sincerely,