



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.

Sincerely,

7/7/2022

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Executive Director

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