

You previously applied to this Board for a discharge upgrade and were denied on 5 November 2002.

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 addition, the Board considered your contentions that you incurred a Mental Health Condition (MHC) during military service, which might have mitigated your discharge character of service, and that you experienced racial discrimination while in confinement. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 29 April 2022. The AO stated in pertinent part:

Among available records, there is no evidence of a mental health diagnosis in military service. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. Unfortunately, he has provided no medical evidence in support of his claims. His personal statement is not sufficiently detailed to establish a clinical diagnosis or nexus with his misconduct. Additional records (e.g., medical records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The AO concluded, “[b]ased on the available evidence, it is my clinical opinion that there is insufficient evidence of a diagnosis of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct may be attributed to a mental health condition.”

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your SPCM conviction, outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included a lengthy period of unauthorized absence (UA). The Board also noted that there is no evidence in your record, and you submitted none, to support the allegations you were suffering from depression and faced discrimination during confinement. Therefore, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to a MHC. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Sailor and continues to warrant a BCD. 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 your case. 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, _____

7/20/2022

[REDACTED]

Executive Director

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