



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: 1684-22
6822-15
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 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 the advisory opinion (AO) furnished by a qualified mental health professional dated 20 April 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 14 June 2016. Before this Board's denial, the Naval Discharge Review Board also denied your request for relief in March 2012.

You enlisted in the Navy and began a period of active duty on 12 February 2007. On 30 November 2009 and 1 December 2009, you were counseled concerning deficiencies in your performance and responsibilities. On 3 December 2009, you received non-judicial punishment (NJP) for assault. During the period from 3 December 2009 to 1 January 2010, you received five additional counselings concerning deficiencies in your performance, responsibilities and personal behavior. The record shows that your final conduct average was 2.3.

Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Based on the information contained on your Certificate of Release or Discharge from Active Duty (DD Form 214), you were separated from the Navy on 20 May 2010, with a "General (Under Honorable Conditions)," characterization of service, your narrative reason for separation is "Misconduct (Pattern of Misconduct)," your separation code is "GKA," and your reenlistment code is "RE-4."

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 supporting documentation and your desire for a discharge upgrade. The Board also considered your contentions that: (1) your conduct was based on "racial profiling"; (2) your discharge should be based on performance not race; and (3) because of your illness at the time of your discharge and your "racist command" you felt that you were targeted. 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 20 April 2022. The AO stated in pertinent part:

Among available records, there is no evidence of a mental health diagnosis in military service. In-service, it appears that the Petitioner was closely evaluated and while Psychosocial and Environmental stressors were noted, no mental health diagnosis was assigned. Post-service, the VA has granted service connection for Major Depressive Disorder, and his PTSD diagnosis appears to be attributed to childhood trauma. While his misconduct and counselings do follow a purported deployment in 2008/2009, his personal statement and medical records are lacking sufficient detail to establish a nexus with his misconduct. Additional records (e.g., service medical records describing the Petitioner's diagnosis and symptoms in service, or records detailing 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 diagnosis of PTSD that may be attributed to military service. There is post-service evidence of another mental health condition (depression) that could be attributed to military service. There is insufficient evidence that his misconduct could be attributed to PTSD or another mental health condition.”

In response to the AO, you provided statements disagreeing with the AO. You also provided further clarification of the basis for your PTSD and the circumstances of your case.

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 multiple administrative counselings and NJP, outweighed these mitigating factors. In making this finding, the Board considered the nature of your administrative counselings, and the seriousness of the offense you committed. Further, the Board determined that your conduct scores were insufficient to qualify for a fully Honorable characterization of service. The Board noted that characterization of service is based in part on conduct marks assigned on a periodic basis. At the time of your service, a conduct mark average of 2.5 was required to be considered for a fully Honorable characterization of service; a minimum mark you failed to achieve. Finally, the Board concurred with the AO in that there is insufficient evidence that your misconduct could be attributed to PTSD or another mental health condition. Based on these factors, the Board concluded significant negative aspects of your active service outweighed the positive and continue to warrant a General (Under Honorable Conditions) characterization. The Board was not persuaded by your arguments as previously discussed and noted you did not provide any evidence to substantiate your contentions of racial profiling or “biasism” of your conduct. 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

Signed by: █