



**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: 2170-22  
3858-07  
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 28 September 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 and your response to the AO.

You previously applied to this Board for an upgrade to your characterization of service and were denied on 13 June 2007. Before this Board's denial, the Naval Discharge Review Board also denied your request for relief on 17 April 1995 and 7 May 1996.

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 character of service,

receive the Purple Heart Medal and all applicable medals and honors, and backpay to the time of your request. The Board also considered your contention that you incurred racism, hazing, and harassment, as well as suspicion of sexual orientation under the Don't Ask, Don't Tell policy, which contributed to your misconduct. 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 24 May 2022. The AO stated in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition during military service. Throughout his military processing, there were no concerns raised of a mental health condition that required evaluation. Post-service, the VA has granted service connection for psychotic disorder. Unfortunately, there is insufficient information regarding his mental health condition (e.g., symptoms, onset, etc.) to establish a nexus with his misconduct, particularly given his pre-service behavior that appears to have continued in military service. Additional records (e.g., complete VA mental health records, including the Compensation and Pension (C&P) exam report, describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion that there is post-service evidence 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."

In response to the AO, you provided documentation that supplied additional clarification of 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 four NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact your performance and conduct had on the good order and discipline of your command. Additionally, the Board concurred with the AO and determined that while there is post-discharge evidence of a mental health condition, there is insufficient evidence that your misconduct may be attributed to a mental health condition. As pointed out in the AO, there is insufficient information regarding your mental health condition to establish a nexus with your misconduct, particularly given your pre-service behavior that appeared to have continued in military service. As a result, the Board determined your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an Other Than Honorable (OTH) characterization. Additionally, the Board found no evidence to support the issuance of any awards, including the Purple Heart medal, or granting of any back pay. While the Board considered your supporting documentation, after applying liberal consideration, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service, issuance of any awards and back pay, 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,

10/12/2022

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Executive Director

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