



You previously applied to this Board for a discharge upgrade but were denied on 24 March 2010, 30 April 2012, and 7 April 2015.

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 and contention that you were suffering from a Traumatic Brain Injury (TBI) and other mental health conditions that mitigated your conduct. 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 27 June 2022. The AO stated in pertinent part:

While Petitioner's available in-service personnel and medical records did not contain a formal diagnosis of PTSD, TBI, or other mental health conditions, there is evidence of a car crash in 1985, prior to his entry into Naval service. There is also post-service evidence of several mental health conditions. However, his pre-service physical did not indicate the presence of any medical symptoms that would disqualify him from military service. Throughout his disciplinary processing, there were no concerns raised that would have warranted a referral for additional evaluation. As such, it is difficult to attribute his misconduct to TBI or a mental health condition. Additional information, such as post-service treatment records describing the Petitioner's mental health diagnosis and its specific link to his misconduct, would aid in generating an alternate opinion.

The AO concluded, "[b]ased on the available evidence, it is my clinical opinion that there is insufficient evidence that Petitioner may have sustained a TBI during military service. There is insufficient evidence that the circumstances surrounding his separation could be attributed to TBI or another 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 two NJPs and civil conviction, outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative effect it had on the good order and discipline of the command. Further, the Board took into consideration the discrediting nature your civil conviction likely had on the Navy. Finally, the Board concurred with AO that there is insufficient evidence that TBI or a mental health condition may be attributed to your military service or misconduct. As a result, the Board concluded 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 that 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,

9/7/2022

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