



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: 2255-22
Ref: Signature Date

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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. Your current request has been carefully examined by a three-member panel of the Board, sitting in executive session on 11 July 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 the 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 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). As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an Advisory Opinion (AO) on 4 May 2022. You were provided an opportunity to respond to the AO, but chose not to do so.

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.

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 contentions that you are dealing with PTSD as the result of your attempts to rescue a pilot from a crash, adding, this diagnosis may have mitigated your misconduct. In addition, you submitted post-discharge medical documents. For purposes of clemency consideration, the Board noted you submitted supporting documents describing post-service accomplishments but no advocacy letters.

In connection with your assertion that you incurred PTSD, a qualified mental health professional reviewed your record and provided the Board with the AO. The AO stated in pertinent part:

Petitioner's OMPF (official military personnel file) did not contain evidence of a diagnosis of a mental health condition. In contrast, evidence submitted by Petitioner contained evidence of a post-discharge diagnosis of PTSD. Avoidance of reminders of the traumatic event is a symptom of PTSD. Therefore, his underage drinking, UA, and breaking restriction could be conceptualized as PTSD avoidance behaviors. However, Petitioner's PTSD does not account for all of his misconduct. For example, he had two nonjudicial punishments (NJP) prior to the purported trauma. Although irritability is another symptom of PTSD, it seems more reasonable to attribute his misconduct (assault) to longstanding difficulties with conflict resolution rather than PTSD given his history of assault prior to the purported trauma and before entering military service. Petitioner's nonpayment of debt/writing worthless checks, which appears to be the primary reason for his discharge, is not the type of misconduct typically associated with symptoms of PTSD.

The AO concluded, "based on the available evidence, it is my clinical opinion Petitioner's diagnosed PTSD can be attributed to his military service. Additionally, some of Petitioner's misconduct can be attributed to PTSD."

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 nonjudicial punishments, summary courts-martial, and special court-martial, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact it had on the good order and discipline of your command. In addition, the Board concurred with the AO that only some of your misconduct could be attributed to your PTSD and that your primary reason for separation is not the type of misconduct associated with PTSD. Finally, the Board considered that you already received a large measure of clemency when the Special Discharge Review Board upgraded your discharge, on 31 March 1978, to General (Under Honorable Conditions). As a result, the Board concluded that significant negative aspects of your active service outweighed the positive aspects and continues to warrant a General (Under Honorable Conditions) 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,

7/25/2022

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Executive Director

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