



**DEPARTMENT OF THE NAVY**  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

█  
Docket No: 2438-22  
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. Your currently request has been carefully examined by a three-member panel of the Board, sitting in executive session on , 8 August 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 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 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 7 June 2022. You were provided an opportunity to respond to the AO but chose not to do so.

You previously applied for a discharge upgrade to this Board but were denied on 15 November 2021.

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 incurred PTSD during military service. In addition, you assert that: (1) you are still bothered by

what happened while on active duty, (2) you desire to have your service updated in order to receive the benefits you deserve, (3) young people need to receive classes on fair treatment and rights while on active duty, and (4) you were treated unfairly. For purposes of clemency consideration, the Board noted you provided an advocacy letter but no supporting documentation describing post-service accomplishments.

Based on your assertions that you incurred PTSD during military service, which might have mitigated the misconduct that led to your discharge character of service, a qualified mental health professional reviewed your request for correction to your record and provided the Board with the AO. The AO stated in pertinent part:

During military service, he was diagnose with alcohol use and substance use disorders (AUD/SUD). Problematic alcohol use and substance use are incompatible with military readiness and discipline and considered amenable to treatment, depending on the individual's willingness to engage in treatment. While it is possible that some of his misconduct could be attributed to effects of excessive alcohol consumption, there is no evidence he was unaware of the potential for misconduct when he began to drink or was not responsible for his behavior. He has provided no evidence of another mental health condition to support his claim, and in the absence of additional medical records, it is difficult to determine an additional diagnosis of depression, given his alcohol use in-service. Additional records (e.g., post-service mental health 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 considered medical opinion that there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service, other than AUD/SUD. There is insufficient evidence that his misconduct could be attributed to PTSD or another mental health conditions, other than AUD/SUD.”

Based upon this review, the Board concluded these 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 effect it had on the good order and discipline of your unit. In addition, the Board considered your refusal to participate in alcohol rehabilitation treatment. Finally, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to PTSD or another mental health condition other than your alcohol/substance use disorder. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Marine 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,

8/23/2022

