



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: 2536-22
4024-21
Ref: Signature Date



Dear Petitioner:

This is in reference to your application for correction of your husband's 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 10 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 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 24 June 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 husband previously applied to this Board for an upgrade to his characterization of service and was denied on 23 August 2021.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in this case in accordance with the Wilkie Memo. These included, but were not limited to, your desire to have your husband's discharge character of service upgraded and contentions that he incurred an onset of "mental health suicide" while serving in the Navy and that Petitioner's record should be corrected so that he may receive health care from the Department of Veterans Affairs (VA). For purposes of clemency consideration, the Board noted your submission of supporting documentation on behalf of the Petitioner.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 24 June 2022. The AO stated in pertinent part:

[Your husband] was appropriately referred for psychological evaluation during his enlistment and properly evaluated during multiple hospitalizations. His personality disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose to the mental health clinician, and the psychological evaluation performed by the mental health clinician. By definition, a personality disorder diagnosis indicates lifelong characterological traits unsuitable for military service. Unfortunately, he has provided no medical evidence to support his claims of another mental health condition. While he has provided evidence of "mental deficiency" that is temporally remote from his military service, there is no evidence that this disability is related to his military service. His in-service misconduct appears to be consistent with his diagnosed personality disorder, rather than evidence of another mental health condition incurred in or exacerbated by military service. Furthermore, it is difficult to consider how another mental health condition would account for his misconduct, given his statement in service that his UA was related to family circumstances, and his repeated ingestion of nonnutritive items was described as an attempt to avoid confinement, rather than self-harm. 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 clinical opinion that there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition."

In response to the AO, you provided a rebuttal statement and reiterated your basis for relief that included assertions that your husband suffers late-stage dementia and other medical and mental health problems due to untreated service connected disabilities while serving in the Navy.

Based upon this review, the Board concluded the potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your husband's misconduct, as evidenced by his five NJPs, SCM, and two SPCMs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of his misconduct and concluded it showed a complete disregard for military authority and regulations. The Board also considered the negative impact your husband's conduct likely had on the good order and discipline of his command. The Board further concluded that your husband's discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects his conduct during his period of service, which was terminated by his Bad Conduct Discharge (BCD). Additionally, notwithstanding your assertions to the contrary, the Board concurred with the AO and determined that there is insufficient evidence of a mental health condition that may be attributed to military service or to his misconduct. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. As a result, the Board determined Petitioner's conduct constituted a significant departure from that expected of a Sailor and continues to warrant a BCD characterization. While the Board noted your husband's current medical condition and need for a conservatorship, after applying liberal consideration, the Board did not find evidence of an error or injustice that warrants upgrading Petitioner's 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,

8/23/2022

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Executive Director

Signed by: █