



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: 2993-22
4662-21
3094-21
11544-19
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 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 10 June 2022 and your response to the AO.

You previously applied to this Board for a change to your narrative reason for separation and upgrade to your characterization of service. You were denied relief on 20 February 2020, 10 June 2021, and 7 October 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 for a discharge upgrade and change your narrative reason for separation. In addition the Board considered your contentions that: 1) you entered service with a pre-existing mental health disorder that was undetected you're your entry into service; 2) you were not evaluated prior to military service for mental health concerns, which were aggravated by your confinement for misconduct; 3) you were confirmed by the Navy that you suffered from a personality disorder during your service, which was determined to be a "sufficient mental defect" requirement for separation from the military; 4) your mental health issues was never properly treated; 5) your issues related to the Uniform Code of Military Justice (UCMJ) are very much in line with the expected symptoms one would display if suffering from an untreated personality disorder; 6) you were not medicated for your condition, proper care could have eliminated a considerable amount of these problematic events; and 7) If your condition was treated as a mental health concern and you were hospitalized rather than incarcerated, most of your infractions could have easily been preventable. For purposes of clemency consideration, the Board noted you provided advocacy letters but no supporting documentation describing post-service accomplishments.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 10 June 2022. The AO stated in pertinent part:

During military service, the Petitioner was diagnosed with a personality disorder, 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 over multiple visits. A personality disorder diagnosis is pre-existing to military service. By definition, it is neither incurred in nor exacerbated by military service, as it indicates lifelong characterological traits unsuitable for military service. Post-service, he has also received a diagnosis of MDD, but this condition is temporally remote to his military service and does not appear to be related. His in-service misconduct appears to be consistent with his diagnosed personality disorder, rather than evidence of another mental health condition.

The AO concluded, "[b]ased on the available evidence, it is my considered medical 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, other than his diagnosed personality disorder."

In response to the AO, you provided new supporting 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 two NJPs, SPCM, and GCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded your record of misconduct showed a complete disregard for military authority and regulations. The Board further concluded that the discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service, which was terminated by your BCD. Additionally, 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, and there is insufficient evidence that your misconduct could be attributed to a mental health condition, other than your diagnosed personality disorder. While the Board considered your advocacy letters and commended your post-discharge good character, they ultimately concluded that it was insufficient mitigation evidence to outweigh your 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 your conduct constituted a significant departure from that expected of a Marine and continues to warrant a BCD. 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 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,

8/24/2022

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Executive Director
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