



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: 3321-22
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. A three-member panel of the Board, sitting in executive session, considered your application on 18 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 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) 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). You were provided an opportunity to respond to the AO, but chose not to do so.

You previously applied to this Board for an upgrade to your characterization of service and were denied on 9 October 2019.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrants 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 mental health concerns as a result of military service. In addition, you contend that: (1) you were experiencing significant distress following a physical assault and racial targeting, including having money stolen from your locker, (2) you were an outstanding Marine until you

began having debilitation and severe cluster headaches during military service, (3) these headaches were terrible and affected your performance in many ways and contributed to your misconduct, and (4) you earned the Marine Corps Good Conduct Medal for your first three years. For purposes of clemency consideration, the Board noted you provided advocacy letters but no supporting documentation describing post-service accomplishments.

Based on your assertions that you incurred mental health concerns during military service, which might have mitigated 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 on 31 May 2022. The AO stated in pertinent part:

During military service, he was diagnosed with an alcohol use disorder. Problematic alcohol use is incompatible with military readiness and discipline and considered amenable to treatment, depending on the individual's willingness to engage in treatment. While it seems that at least some of his misconduct could be attributed to effects of excessive alcohol consumption, there is no evidence he was unaware of his actions or not responsible for his behavior. There is insufficient evidence to attribute his misconduct to cluster headaches, as two of his NJPs occurred before he was receiving treatment for his condition, and his subsequent NJP appears related to alcohol use. Additional records (e.g., medical records describing 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, other than alcohol use disorder. There is insufficient evidence that his misconduct could be attributed to a mental health condition, other than his alcohol use disorder."

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 nonjudicial punishments, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved violence against other Marines. This led the Board to find that your conduct had a likely negative effect on the good order and discipline of your unit. Finally, the Board concluded with the AO that there is insufficient evidence that your misconduct may be attributed to a mental health condition, other than your alcohol use disorder. As pointed out in the AO, two of the incidents of misconduct occurred prior to you receiving treatment for your headache condition. As a result, the Board concluded your conduct constituted 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 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,

8/5/2022

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Executive Director

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