



You previously applied to this Board for a discharge upgrade but were denied on 7 March 2013. The Board determined the mitigation evidence you submitted in support of your request was insufficient to offset the seriousness of your misconduct that resulted in two non-judicial punishments (NJP) and a special court-martial (SPCM) conviction.

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 Post Traumatic Stress Disorder (PTSD) and other mental health conditions during military service in the █. Further, the Board considered your arguments that the Department of Veterans Affairs (DVA) diagnosed and treated you for PTSD but discontinued treatment due to medication side effects, you “witness horrible things” following a 1991 volcanic eruption which resulted in “nightmares of people being buried alive, and your BCD is erroneous. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

As part of the Board’s review, a qualified mental health professional reviewed your request and provided the Board with an AO on 12 July 2022. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. He has provided no medical evidence to support his claims. Unfortunately, his personal statement is temporally remote from his military service and not consistent with available service records. His statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct. 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 clinical opinion there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to PTSD or another mental health condition.”

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 two NJPs and SPCM conviction, outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the discrediting nature of your misconduct to the Marine Corps. Further, the Board noted you did not provide any substantiating evidence to support your contentions. Therefore, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to PTSD. Finally, the Board noted you were appropriately assigned a BCD on your DD Form 214 as sentenced by the SPCM. As a result, the Board concluded 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 your case. 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,

9/13/2022

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Executive Director

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