



threat. Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Based on the information contained on your Certificate of Release or Discharge from Active Duty (DD Form 214), you were separated from the Navy on 21 September 1995, with an "Other Than Honorable Conditions" (OTH) characterization of service, your narrative reason for separation is "Misconduct" your separation code is "HKQ," and your reenlistment code is "RE-4."

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 character of service and contentions that at the time of your discharge you were under major stress, you have corrected those behaviors, and have a number of witnesses that can vouch for your behavior changes. For purposes of clemency consideration, the Board noted you provide supporting documentation describing post-service accomplishments and 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 25 August 2022. The AO noted in pertinent part:

There is no evidence he was diagnosed with a mental health condition in military service. There is evidence of injuries sustained in a car accident, but no evidence of residual traumatic brain injury (TBI) symptoms requiring on-going treatment. He has provided no medical evidence in support of his claims. As there is insufficient information regarding his misconduct, it is not possible to render an opinion regarding a potential nexus with a purported TBI. 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, "it is my considered clinical opinion there is insufficient evidence of a TBI that may be attributed to military service."

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 discharge for the commission of a serious offense discharge, outweighed these mitigating factors. In making this finding, the Board considered the negative impact your performance and conduct likely had on the good order and discipline of your command. Furthermore, the Board concurred with the AO and determined that there is insufficient evidence of a TBI that may be attributed to military service. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization. Finally, while the Board considered your advocacy letters and commended you for your post-discharge good character, they ultimately concluded that it was insufficient mitigation evidence to outweigh your misconduct. Even in light of the Wilkie Memo and reviewing the record holistically, 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,

10/24/2022

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Executive Director

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