



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: 4136-22
3451-10
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 7 September 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, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You previously applied to this Board for an upgrade to your characterization of service. You were denied relief on 9 February 2011.

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. In addition the Board

considered your contentions that: 1) you incurred PTSD and TBI after being struck in the head with a 2x4 board by another Marine; 2) you suffered and still suffer from PTSD, memory loss, migraines, nightmares, night sweats, and depression; 3) the assault against you was due to racial tension that was occurring on base; and 4) you were advised that your character would be upgraded after six months. You assert that you became angry and confused after your traumatic incident and felt that you had no one to confide in because the Marine Corps made you feel like the atrocity was your own fault. 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 22 July 2022. The AO stated in pertinent part:

There is evidence in the Petitioner's service medical record that he may have sustained a traumatic brain injury (TBI) during military service. During military service, he was also evaluated by psychiatry and diagnosed with a personality disorder. His personality disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. Post-service, he has provided evidence of diagnoses of post-traumatic stress disorder (PTSD), Adjustment disorder, and TBI that are temporally remote to his military service. It is possible that the symptoms attributed to personality disorder in service have been re-conceptualized as PTSD symptoms with the passage of time and improved mental health understanding. Most of his misconduct occurred following the assault and is consistent with symptoms of PTSD avoidance. However, he did have periods of UA prior to the assault, which can not be attributed to PTSD or TBI.

The AO concluded, "it is my clinical opinion that there is evidence of a TBI that may be attributed to military service. There is some post-service evidence of diagnoses of PTSD and Adjustment Disorder that may be attributed to military service. There is insufficient evidence that all of his misconduct could be attributed to PTSD, TBI, or another mental health condition."

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 six NJPs and SPCM conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded that it showed a complete disregard of military authority and regulations. The Board also considered the negative impact your conduct likely had on the good order and discipline of your command. Additionally, the Board concurred with the AO and determined that while there is evidence of a TBI and some post-service evidence of diagnoses of PTSD and an Adjustment Disorder that may be attributed to military service; there is insufficient evidence that all of your misconduct could be attributed to PTSD, TBI, or another mental health condition. In reviewing your history of misconduct, the Board ultimately concluded the mitigation offered with your TBI and mental health condition was insufficient to outweigh the severity and nature of your misconduct.

Furthermore, the Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years and, absent a material error or injustice, 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 an Other Than Honorable (OTH) characterization. While the Board considered your advocacy letters and commended your post-discharge good character, 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,

9/25/2022

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Executive Director

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