



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: 5328-22
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. Your currently request has been carefully examined by a three-member panel of the Board, sitting in executive session on 28 November 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 the 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 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) on 30 September 2022. Although you were provided an opportunity to respond to the AO, you chose not to do so.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You twice previously applied to this Board for a discharge upgrade but were denied on 4 April 2018 and 28 February 2022.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, your desire to upgrade your discharge and contentions that: (1) you injured your back on the ship which led to the start of a medical board, (2) your chain of command started harassing you after your back injury, (3) you were further harassed when you were transferred to the first lieutenant's office to await discharge, (4) you felt depressed, anxious, and trapped, (5) the Department of Veterans Affairs (VA) determined you can be treated for mental health but the VA in █ will not treat you due to your discharge characterization, and (6) your back is hurt and you may need surgery but you have no medical coverage and cannot receive medical care. For purposes of clemency and equity consideration, the Board noted you provided documents from the VA.

Based on your assertions that you incurred PTSD and other mental health concerns (MHC) during military service which might have mitigated the misconduct that led to 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. The AO stated in pertinent part:

During military service, the Petitioner was evaluated by a military psychiatrist and did not meet criteria for a mental health condition. Post-service, the VA determined service connection for a depressive disorder, and a civilian provider has assigned a diagnosis of PTSD. Both conditions are temporally remote and attributed to military service. Unfortunately, his personal statement and available records are not sufficiently detailed to establish a nexus with his misconduct. It is difficult to attribute his gasoline abuse to a mental health condition incurred during military service, as it began prior to enlistment. It is difficult to attribute his UA (unauthorized absence) to a mental health condition, as he attributed it to oversleeping, and was cleared of a sleep disorder during military service. There is insufficient information regarding his disobedience to attribute it to a mental health condition. Additional records (e.g., complete post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his military service) would aid in rendering an alternate opinion.

The AO concluded, "it is my considered medical opinion there is post-service evidence the Petitioner may have incurred PTSD during military service. There is post-service evidence of 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."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Further, the Board concurred with the AO that there is

insufficient evidence your misconduct could be attributed to PTSD or another mental health condition. The Board was not persuaded by your arguments and noted you did not provide any evidence to substantiate your allegations of hazing. 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 concluded your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization. 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 an upgraded characterization of service as a matter of clemency or equity. Accordingly, given the totality of the circumstances, the Board determined that 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,

12/14/2022

