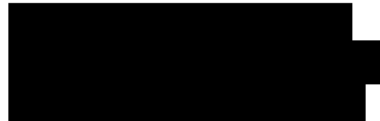




DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

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Docket No: 5776-22
6672-18
Ref: Signature Date



Dear █:

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 4 January 2023. 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 professional and your response to the AO.

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 previously applied to this Board for an upgrade to your characterization of service and were denied on 28 March 2019. Prior to this Board's decision, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request, on 20 December 2012, based on their determination that your discharge was proper as issued.

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 change your discharge character of service, narrative reason for separation, and reentry code. The Board also considered your contentions that: 1) an error and injustice occurred during your military service as you received differential treatment than others due to your mental health condition during and after your deployments; 2) prior review boards neglected to review your in-service mental health records or post-service mental health records which contributed to your serious misconduct; 3) Prior review Boards neglected to apply reasonable insight into seriousness of your misconduct due to loss of evidence and supporting documents during the application process which took more than 18 months to receive feedback on a personal or telephonic hearing; 4) your first non-judicial punishment (NJP) was due to your youth and ignorance of the Marine Corps procedures, and your second NJP was a false accusation; the unauthorized absence (UA) charge was due to poor management by your command, because you were not UA from your place of duty, but had a different obligation due to schooling requirements; 5) your UA following the motor vehicle accident was also erroneous, as you should have received convalescent leave; and 6) your depressed state of mind interfered with effective problem solving with your command. For purposes of clemency and equity consideration, the Board noted you did provide supporting documentation describing post-service accomplishments but no 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 16 September 2022. The AO noted in pertinent part:

During military service, the Petitioner was diagnosed with an adjustment disorder in the context of occupational, legal, and academic stressors. Post-service, the Petitioner has reported to providers he received treatment and diagnosis for combat-related PTSD. However, these records are based on the Petitioner's report of treatment and diagnosis, rather evidence of treatment. Unfortunately, his report is not consistent with the provided service medical records, which do not list a diagnosis of PTSD. It is possible that some of his UA in service could be attributed to impaired judgment and anger with his command, due to an adjustment disorder following return from deployment and purported physical limitations following the accident. However, it is difficult to attribute all of his extended UA to an adjustment disorder, given his decision to continue to remain UA until apprehended. The misconduct leading to his first and second NJP can not be attributed to a mental health condition, as he contends that they were either false charges or stemmed from his own ignorance of procedure. Additional records (e.g., complete post-service mental health records describing the Petitioner's diagnosis, symptoms, treatment, 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 evidence of a mental health condition that may be attributed to military service (adjustment disorder). There is some post service evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence all of his misconduct could be attributed to PTSD or another mental health condition.”

In response to the AO, you provided a statement with additional information regarding the circumstances of your case along with documentation from the Department of Veterans Affairs.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct as evidenced by your three NJPs, 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. Further, the Board considered the likely negative effect your conduct had on the good order and discipline of your unit. Furthermore, the Board concurred with the AO that while there is evidence of a mental health condition that may be attributed to military service (adjustment disorder) and some post service evidence of a diagnosis of PTSD that may be attributed to military service, there is insufficient evidence all of your misconduct could be attributed to PTSD or another mental health condition. The Board concluded the record clearly reflected that your active duty misconduct was intentional and willful. The Board also determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should otherwise not be held accountable for your actions. 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. Ultimately, the Board was not persuaded by your arguments and concluded the evidence you provided was insufficient to mitigate the seriousness of your misconduct. Therefore, while the Board empathized with your current medical condition and commends your post-discharge accomplishments, 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 the relief you requested or the granting of relief as a matter of clemency or equity. 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,

1/18/2023

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Executive Director

Signed by █