



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

■  
Docket No: 6140-22  
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 5 December 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, applicable statutes, regulations, and policies, to include the 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). 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 21 October 2022. Although you were provided an opportunity to respond to the AO, you chose not to do so.

You previously applied to this Board to have your reentry code changed and were denied on 24 February 2012.

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 reenlistment code to and contentions that you were suffering from undiagnosed PTSD, were encouraged to consume

alcohol rather than address your medical health symptoms, and treated unfairly in receiving an RE-4 reentry code. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

Based on your assertions that you incurred PTSD during military service which might have mitigated 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 diagnosed with an alcohol use disorder. Problematic alcohol use is incompatible with military readiness and discipline and considered amenable to treatment, depending on the individual's willingness to engage in treatment. When evaluated during military service, he demonstrated an awareness of the potential for misconduct when he began to drink and was deemed responsible for his behavior. While the record does indicate that he participated in combat operations, there is no evidence of a diagnosis of PTSD during military service and he has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms of provide a nexus with his misconduct, particularly given pre-service problematic alcohol use that appears to have continued service. 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 that there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to PTSD."

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 and alcohol abuse rehabilitation treatment failure, 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. In the Board's opinion, your record of misconduct supports a finding that you were unsuitable for further military service at the time of your discharge. Nothing in your record or application persuaded the Board that the reentry code issued was erroneous or no longer appropriate. Further, the Board considered that you already received a large measure of clemency when this Board granted you an upgrade to your characterization of service to a General (Under Honorable Conditions). Finally, the Board concurred with the AO that there is insufficient evidence your misconduct could be attributed to PTSD. As a result, the Board concluded your conduct constituted a significant departure from that expected of Marine and continues to warrant the reentry code of RE-4. 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 changing your reentry code or relief 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,

1/4/2023

