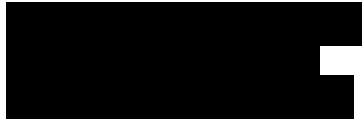




DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

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Docket No: 6792-22
6264-19
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 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. 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 previously applied to this Board for an upgrade to your characterization of service and were denied on 21 August 2020.

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 and contentions that: 1) you suffered from undiagnosed mental health conditions and PTSD during service which may have mitigated the circumstances of your discharge; 2) your discharge involved an error, which resulted in an injustice; 3) the injustice has caused immeasurable pain to you psychologically and emotionally; 4) during your training you were mistreated, assaulted, and abused by drill instructors to the point of developing PTSD which was diagnosed later in life; 5) your drill instructors refused to have you evaluated for psychological concerns, the commanding officer described your behavior inaccurately and falsely; 6) after having an asthma attack, your drill instructor ensured you did not receive a medical discharge by falsely accusing you in order for you to receive an Other Than Honorable discharge; and 7) you would have received a different discharge status if the errors had not been made and resulted in an injustice. You further assert that your response to the instructor's treatment and service discharge thereafter was detrimental to your health, included suicidal attempts, and resulted in a discharge that has made job opportunities scarce for you. For purposes of clemency and equity consideration, the Board noted you provided a letter from a licensed clinical psychologist and an advocacy letter, 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 3 November 2022. The AO noted in pertinent part:

The Petitioner contends that he suffered from undiagnosed mental health conditions and PTSD during service which may have mitigated the circumstances of his discharge. Specifically, he indicated that he was harassed and mistreated in boot camp by the drill instructors to the point where he believes he incurred PTSD and/or other mental health conditions. He submitted a letter from his wife as evidence. There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He has provided no medical evidence in support of his claims. Throughout his processing and confinement he never mentioned any mental health conditions or symptoms that he may have been suffering from. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct. 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 mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition."

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 five NJPs and two SPCM convictions 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 there is insufficient evidence of a mental health condition that may be attributed to military service, and there is insufficient evidence that your misconduct could be attributed to a mental health condition. As the AO noted, your personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with your misconduct. Finally, the Board 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. The Board noted that you provided no evidence to substantiate your contentions of abuse and mistreatment. However, even if your allegations were determined to be true and resulted in a mental health condition, in reviewing your record of misconduct, the Board could find no nexus between a mental health condition and your misconduct resulting from a lack of integrity, e.g. fraudulent claims for dependent allowance and riding in a vehicle during a physical fitness test. 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 concluded the evidence you provided was insufficient to mitigate the seriousness of your misconduct. Therefore, 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: █