



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: 6967-22

Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 19 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)/mental health condition (MHC) (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 reviewed an Advisory Opinion (AO) from a qualified mental health professional and your response to the AO.

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 contention that, you were suffering from undiagnosed mental health concerns during military service. 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 mental health concerns (MHC) during military service, which might have mitigated the circumstances surrounding your separation from 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:

There is no evidence that he was diagnosed with a health condition during military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms during military service 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 experienced during military service. There is insufficient evidence his misconduct could be attributed to a mental health condition."

On 12 December 2022, the Board received your rebuttal in response to the AO where you provided a September 2019 mental health evaluation which documents a mental health diagnosis. In connection with the additional document provided, the Board request, and reviewed, a second AO. The second AO reviewed your service record as well as your petition, the matters, and the original and recent materials that you submitted and provided the following:

Reviewed rebuttal evidence, including a September 2019 mental health evaluation noting a "history of bipolar diagnosis, 2008...based on general mental health screening, but was coming off drugs." During the 2019 evaluation, he "denied current mental health symptoms... No further action required at this time." SM provided evidence of a mental health diagnosis that was temporally remote to military service and appears unrelated. Original AO remains unchanged.

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 multiple unauthorized absences that totaled 266 days and ended with your apprehension, 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 considered the likely negative effect your misconduct had on the mission and good order and discipline of the command. Lastly, the Board concurred with the AO that there is insufficient evidence of a mental health condition experienced during military service or that could be attributed to your misconduct. 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 the 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 is attached 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,

1/13/2023

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Executive Director

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