



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

■  
Docket No: 7731-22  
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 21 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). Additionally, the Board also considered the advisory opinion (AO) furnished by qualified mental health provider, which was previously provided to you as part of your previous application. Although you were provided an opportunity to respond to the AO, you chose not to do so.

You previously applied to this Board for a discharge upgrade but were denied on 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 Wilkie Memo. These included, but were not limited to, your desire to upgrade your discharge and contentions that; (1)

you were traumatized by an incident on board the submarine you served on, (2) you started using drugs as a self-medication method, (3) you incurred PTSD, have become reclusive and have trouble holding a job and sleeping, (4) you are now drug free and the father of a seven-year old who you are raising to be drug and alcohol free, (5) your PTSD is worsening and you need financial help and additional counseling. For purposes of clemency and equity consideration, the Board noted you provided advocacy letters but no supporting documentation describing post-service accomplishments.

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, the Board reviewed AO from your initial application to the Board. The AO stated in pertinent part:

Petitioner's service record is very limited and there is no information in the service record regarding the charges for his pending court martial trial or the nature of his disobedience. Among the available records, there is no evidence that the Petitioner was diagnosed with PTSD or another mental health condition in service. He has provided post-service records indicating a diagnosis of PTSD twenty-seven years following his military service, but there are no medical records denoting the onset of this diagnosis or linking it to his time in the Navy. Unfortunately, the Petitioner's statement lacks insufficient information to establish a nexus with his misconduct. Additional records (e.g., complete mental health record listing the Petitioner's diagnosis, symptoms, and their specific link to his behavior in service) are required to render an alternate opinion.

The AO concluded, "it is my considered medical opinion that there is insufficient evidence that the Petitioner incurred PTSD or another mental health condition during military service, and there is insufficient evidence that 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 four NJPs and separation in lieu of trial by court-martial, 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 you incurred PTSD or another mental health condition during military service, and there is insufficient evidence your misconduct could be attributed to PTSD or another mental health condition. Finally, the Board determined that you already received a large measure of clemency when the Navy agreed to administratively separate you in lieu of trial by court-martial; thereby sparing you the stigma of a court-martial conviction and likely punitive discharge. 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. While the Board carefully considered your advocacy letters, 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,

12/13/2022

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Executive Director

Signed by: █