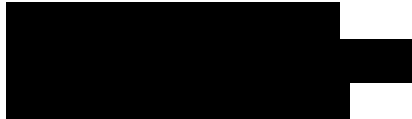




**DEPARTMENT OF THE NAVY**  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

■  
Docket No. 9008-22  
2977-21  
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 19 April 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.

You previously applied to this Board for an upgrade to your characterization of service and were denied on 26 May 2021. Before this Board's denial, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 20 November 2007, 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 and contention that your undiagnosed PTSD contributed to your discharge. You argue that history and the evidence suggest that you would have been able to maintain a healthy progressive life if the same level of care and knowledge that is given today was available at the time of your discharge. For purposes of clemency and equity consideration, the Board noted you provided documentation from the Department of Veterans Affairs, advocacy letters, and your post-service academic transcript.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 28 February 2023. The AO noted in pertinent part:

There is no evidence that he was diagnosed with a mental health condition during his Navy service. Throughout his disciplinary processing in the Navy, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. Following his entry into the █, he received diagnoses of PTSD and other mental health conditions, which he has claimed began during his Navy service. However, available records indicate these conditions onset and became interfering following deployments with the █. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms during Navy 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 Navy service) may aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to Navy service. There is insufficient evidence to attribute the circumstances of his separation from the Navy to a mental health condition."

In response to the AO, you provided a personal statement that supplied additional clarification of the circumstances of your case.

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 it showed a complete disregard for military authority and regulations. The Board also considered the likely negative impact your conduct had on the good order and discipline of your command. Additionally, the Board concurred with the AO that there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to Navy service, and there is insufficient evidence to attribute the circumstances of your separation from the Navy to a mental health condition. As the AO noted, unfortunately, your personal statement is not sufficiently detailed to establish clinical symptoms during your Navy service or provide a nexus with your misconduct. Further, 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. Furthermore, the Board noted you did not provide any evidence to substantiate your contentions. As a result, the Board determined significant negative aspects of your active service outweighed the positive and continues to warrant a General (Under Honorable Conditions) characterization. While the Board carefully considered the evidence you submitted in mitigation, 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 granting you the relief you requested or granting relief as a matter of clemency or equity. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. 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,

5/1/2023

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Executive Director

Signed by: █