



**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. 4024-23  
Ref: Signature Date

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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 current request has been carefully examined by a three-member panel of the Board, sitting in executive session on 10 January 2024. 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 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 it was denied on 8 October 2014. Before this Board's denial, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your requests for an upgrade, on 14 April 2011, based on their determination that your discharge was proper as issued. You reapplied to this Board for an upgrade to your characterization of service, correction to the spelling of your first name, and missing awards. The Board recommended that you be issued a DD Form 215 with the correct spelling of your name and directed an audit of your entitlements to awards. However, your request for discharge upgrade was denied. After an audit

of your record, you were issued a DD Form 215 on 11 April 2022, with block 1. changed to the correct spelling of your name and no other corrections. The facts of your case remain substantially unchanged.

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 was not limited, your request to upgrade your characterization of service and change your DD Form 214 to reflects all awards and trainings received while on active duty, and to correct the spelling of your name. You contend that after your return from deployment, you struggled to maintain your sanity, you informed your chain of command but was told to go back to work, and that the previous Board failed to thoroughly examine your deployment and medical documentation. For purposes of clemency and equity consideration, the Board noted you provided medical documents, briefs, your Official Military Personnel File (OMPF), NDRB request, Department of Veterans Affairs documentation, but no advocacy letters.

As part of the Board review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records and issued an AO dated 13 February 2023. The Ph.D. stated in pertinent part:

There is no in-service evidence of diagnosis or treatment for PTSD, TBI, or other mental health concerns.

There is post-service evidence of evaluation and diagnosis of mild TBI, attributed to military service by the Petitioner's report. However, this diagnosis is temporally remote to military service and symptoms of impairment in concentration and memory are confounded by concomitant mental health concerns experienced by the Petitioner.

There is post-service evidence from the VA of a diagnosis of a mental health condition, depression, that has been attributed to military service by the VA. There is insufficient evidence to attribute PTSD or other mental health concerns to military service.

Available records are not sufficiently detailed to establish a nexus with his misconduct, particularly given the lapse in time and conflicting accounts regarding his rationale for UA. Additional records (e.g., post-service mental health records describing the Petitioner's diagnoses, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The Ph.D. concluded, "it is my clinical opinion there is post service evidence from the VA of mild TBI that may be attributed to military service. There is insufficient evidence to attribute a diagnosis of PTSD to military service. There is post-service evidence from the VA to attribute a mental health condition (depression) to military service. There is insufficient evidence to attribute his misconduct to PTSD, TBI, or another mental health condition."

In response to the AO, you provided a personal statement with additional information regarding the circumstances of your case and additional medical evidence. As a result, the AO conclusion was revised to “[t]here is post-service evidence from the VA of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD, TBI, 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 NJPs, 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. Additionally, unexpectedly absenting yourself from your command placed an undue burden on your chain of command and fellow service members, and likely negatively impacted mission accomplishment. Further, the Board concurred with the AO and determined there is insufficient evidence that his misconduct could be attributed to PTSD, TBI, or another mental health condition. As explained in the AO rebuttal, the additional documents have provided evidence that you received treatment for PTSD from the VA but there is insufficient evidence to attribute your misconduct to TBI, PTSD, or other mental health conditions given your inconsistent report in the rationale for your UA. Finally, the Board concluded that your discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service, which was terminated by your separation with an OTH. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization.

Regarding the administrative corrections you requested to your DD Form 214, the Board noted Commander, Navy Personnel Command previously conducted an audit of your record and issued a DD Form 215 to address any required corrections, including your name. Therefore, the Board determined no additional action was required.

Therefore, while the Board carefully considered the evidence you submitted in mitigation, even in light of the Kurta, Hagel, and Wilkie Memos and reviewing the record liberally and 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,

1/23/2024

