



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

■  
Docket No. 5365-23  
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 31 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 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 afforded an opportunity to submit an AO rebuttal, 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. You were denied relief on 19 September 2018 and 4 October 2021. 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 were not limited to, your desire to upgrade your discharge character of service to “Honorable or General/Medical” or “just General (Under Honorable Conditions)” and contention that you incurred PTSD and TBI from a 1980 car accident and your misconduct was due to an unfair denial of your request for emergency leave to address a child custody problem. For purposes of clemency and equity consideration, the Board noted you provided a personal statement on your behalf and advocacy letters, 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 12 December 2023. The AO noted in pertinent part:

During military service, the Petitioner was appropriately referred and properly evaluated, receiving a diagnosis of an alcohol use disorder. Temporally remote to his service, the VA has provided a diagnosis of PTSD from an in-service car accident. Unfortunately, there is insufficient evidence of interfering symptoms of PTSD in service, particularly as his problematic alcohol use preceded the accident. There is insufficient evidence of residual TBI symptoms requiring treatment. Additional records (e.g., post-service mental health records describing the Petitioner’s diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, “it is my clinical opinion there is post-service evidence from the VA of a diagnosis of PTSD that may be attributed to military service. This is insufficient evidence of TBI that may be attributed to military service. There is insufficient evidence to attribute his misconduct to TBI or PTSD, or another mental health condition other than alcohol use disorder.”

After thorough review, the Board concluded your 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 concluded your misconduct 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. Further, the Board concurred with the AO that, while there is post-service evidence from the VA of a diagnosis of PTSD that may be attributed to military service, there is insufficient evidence of TBI that may be attributed to military service, and there is insufficient evidence to attribute your misconduct to TBI or PTSD, or another mental health condition other than alcohol use disorder. As the AO explained, you were appropriately referred and properly evaluated, receiving a diagnosis of an alcohol use disorder. Temporally remote to your service, the VA provided you a diagnosis of PTSD from your car accident that occurred in-service. However, there is insufficient evidence of interfering symptoms of PTSD in service, particularly as your problematic alcohol use preceded the

accident. Additionally, there is insufficient evidence of residual TBI symptoms requiring treatment. Therefore, 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. 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. 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 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,

2/9/2024

█

Executive Director

Signed by: █