



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

█
Docket No. 7882-23
Ref: Signature Date

█
█
█
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 contentions not previously considered, the Board found it in the interest of justice to review your application. Your current request was considered by a three-member panel of the Board, sitting in executive session, on 29 September 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 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 to 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 previously reviewed advisory opinion (AO) of a qualified mental health provider along with your multiple responses in rebuttal.

The relevant facts with respect to your service history as well as your primary contentions and supporting evidence regarding your experiences during your military service remain unchanged from those summarized in the Board's most recent decision in Docket Number 1804-23, which granted partial relief in the form of an upgraded character of service to "General (Under Honorable Conditions)."

In reconsideration of your request for additional relief, 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 expunge one or more periods of unauthorized absence from your record

to reduce your lost time or to adjust your date of entry such that you might be able to qualify for all of your veterans' benefits. For purposes of clemency and equity consideration, the Board noted you did not submit additional information for consideration with respect to your current request for relief.

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 non-judicial punishments and summary court-martial, outweighed these mitigating factors. With respect to the Board's recent grant of your upgraded characterization to General (under honorable conditions), the Board found that the basis for this partial relief was due to the mitigating factor of your experience of maltreatment. However, the Board also concluded that that your "narrative reason for separation, separation code, and reentry code remain appropriate in light of [your] record of misconduct." Your current request for relief would require that the Board disregard its recent decision, without any further evidence for consideration of additional clemency or equity, and essentially eradicate the misconduct which it previously found sufficient to warrant your continued narrative reason for separation of misconduct. Finally, absent a material error or injustice, the Board declined to summarily change a Petitioner's record solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. Therefore, 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 determined that any injustice in your record was adequately addressed by the previous corrective action. 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,

10/19/2023

