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

[redacted]
Docket No. 9695-23
1071-23
3056-18
4243-06
Ref: Signature Date

[redacted]

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 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 on 7 June 2024, has carefully examined your current request. 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 advisory opinion (AO) of a qualified mental health provider and your response to the AO.

The Board determined that your personal appearance, with or without counsel, would not materially add to the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You have previously applied to the Board for review on three occasions and were denied on 12 April 2007, 6 October 2016, and 29 September 2023. In addition, you were previously denied reconsideration on one occasion. The facts of your case remains 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 continued desire to upgrade your discharge from the Marine Corps and your contentions that the Board "claimed there was no evidence that [you were] suffering from PTSD or from TBI at the time of [your] misconduct" which resulted in your discharge from the Marine Corps under Other Than Honorable conditions, you requested your VA records but had not received them in time for your previous review, and you thought the evidence of the VA upgrade of your disability rating with findings of TBI and PTSD would be sufficient for an upgrade. For purposes of clemency and equity consideration, the Board considered the evidence you submitted in support of your application.

Because you contend that PTSD and/or TBI affected your discharge and have submitted new evidence in this regard, the Board requested and considered an AO, dated 6 May 2024. The AO stated in pertinent part:

> Petitioner submitted two Disability Benefits Questionnaires (DBQ) – one indicating a diagnosis of PTSD and another for TBI. Petitioner contends that he sustained a TBI while serving in the Coast Guard prior to joining the Marine Corps. There was no mention of any head trauma or related symptoms during his enlistment physical with the Marine Corps. Furthermore, the nature of his misconduct – particularly stealing and writing bad checks is not typical behavior of either PTSD or TBI. It is possible that the initial period of UA (19 days) could have been a result of avoidance or withdrawal, but to go UA a second time for 85 days is more indicative of a characterological issue. There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He submitted evidence of post-service diagnoses of PTSD and TBI that are temporally remote to service. His personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct.

The AO concluded, "it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that all of his misconduct could be attributed to either PTSD, TBI or both."

After a review of your rebuttal evidence, the AO remained unchanged.

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 and SPCM, 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, regardless of post-service diagnoses of PTSD and/or TBI, that the nature of your misconduct is not that which would typically be attributable to symptoms or behaviors of PTSD or TBI, even when applying liberal consideration. The Board further concurred the prolonged period of your second UA, during which you fraudulently enlisted into the Army, is more indicative of a characterological issue than a symptom or behavior of either PTSD, TBI, or both. Additionally, the Board reaffirmed its previous assessment that you provided alternative reason during your military service regarding your motivations in going UA being related to caring for your pregnant girlfriend rather than due to trauma from being assaulted or poor judgment due to TBI.

To assist in your understanding, with respect to your contention that you thought the evidence of the VA upgrade of your disability rating with findings of TBI and PTSD would be sufficient for an upgrade, the Board clarifies that, regardless of your post-service diagnoses of PTSD or TBI and even applying liberal consideration, the Board found insufficient evidence that your misconduct was attributable to either condition because either the nature of the offenses or your alternative reason provided for going UA refutes the nexus between your misconduct and your contended PTSD, TBI, or both. Likewise, even considering your contended PTSD, TBI, or both and your previously submitted evidence of post-discharge character, the Board found this potentially favorable information insufficient for a grant on the basis of clemency. Upon review of all potentially mitigating factors, the Board concluded that the evidence you submitted for consideration remains insufficient to outweigh the totality, severity, and nature of your misconduct without even further addressing the problematic concerns raised by your rebuttal to the AO, in which you shifted the timing of your purported assault to having occurred during your Marine Corps service rather than, as previously contended, during your Coast Guard service.

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 that your request does not merit relief.

In the absence of sufficient new evidence for reconsideration, the decision of the Board is final, and your only recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

Sincerely,

6/25/2024

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