

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

> Docket No. 10798-23 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 22 May 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, which was considered favorable to you.

You previously applied to this Board for an upgrade to your characterization of service and were granted relief on 30 June 2021. You applied for reconsideration to this Board requesting additional relief consisting of a change to your narrative reason for separation and separation program designator (SPD) code. Your request was denied on 4 May 2022. Before this Board's review of your previous applications, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 18 March 1985, based on their determination that your discharge was proper as issued. 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 change your narrative reason for separation and SPD code. The Board considered your contentions that you never refused a direct order, never had trouble with civilian authorities, never used drugs, and made a bad decision because of your mental state of mind. You argue that you have read previous Board decisions where other individuals who have done a lot worse than you have and had their reason for separation changed to "Secretarial Authority." For purposes of clemency and equity consideration, the Board considered the documentation you provided in support of your application.

As part of the Board's review, a qualified mental health professional reviewed your contentions and the available records and provided the Board with an AO on 6 May 2024. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, although there is evidence of mental health symptoms. Temporally remote to his military service, he has received service connection for a mental health condition. It is possible that his UA could be considered a behavioral indicator of mental health concerns and attributed to avoidance due to anxiety symptoms.

The AO concluded, "it is my clinical opinion there is post-service evidence from the VA of a mental health condition that may be attributed to military service. There is some post-service evidence to attribute his misconduct to a mental health condition."

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your narrative reason for separation and SPD code remains appropriate in your case. In making this finding, the Board considered the brevity of your active duty service, the incidents of misconduct during your period of active duty, the previous grant of relief, and the lack of any documentation describing post-discharge accomplishments or advocacy letters. Based on these factors, despite conclusion reached by the AO and the existence of a mental health condition, the Board determined your original grant of relief was sufficient to remove any injustice from your record. The Board was not persuaded by your argument that other Petitioners received the requested relief under similar circumstances since each record is unique and adjudicated based on the evidence presented.

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,

