



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

█
Docket No. 184-24
1108-18
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 12 August 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 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.

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 and were denied relief on 1 April 2019. Before this Board's denial, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade and contended your discharge was inequitable in that your capacity to serve was impaired by a poor choice of friends in the off-duty environment.

The NDRB denied your request, on 4 February 1986, 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 upgrade your discharge character of service and contentions that: (1) you were suffering from undiagnosed mental health concerns and would like the timeline of events to be considered, (2) you are currently suffering from cancer, and (3) you are still dealing with your mental health illness. You also allege the Marine Corps failed to follow proper procedures in your administrative separation processing. For purposes of clemency and equity consideration, the Board considered the evidence 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 27 June 2024. The AO stated in pertinent part:

There is evidence that the Petitioner has been diagnosed post-service with Bipolar Disorder. There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, or that he exhibited any symptoms of a mental health condition. Although some of his misconduct could be explained by bipolar symptoms such as mania or severe depression, it is not possible to differentiate what symptoms could have been due to Bipolar versus being under the influence of a substance versus characterological symptoms. His statement is not sufficiently detailed to provide a nexus with his misconduct.

The AO concluded, "it is my considered clinical opinion there is insufficient evidence of a post-service mental health condition. There is insufficient evidence that all of his misconduct could be attributed to a mental health condition."

On 1 August 2024, you submitted a rebuttal in response to the AO addressing and clarifying your previous statements. In connection with the additional statement provided, the Board requested, and reviewed, a second AO. The second AO reviewed your service record as well as your petitioner, the matters, and the original and recent materials that you submitted and found the additional evidence submitted further describing ...

On 30 May 2024, you submitted a rebuttal in response to the AO disclosing a history of sexual abuse and substance use disorder from childhood. After reviewing 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, summary court-martial, and good of the service discharge request, 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. The Board also noted that the misconduct that led to your request to be discharged for the good of the service was substantial and, more likely than not, would have resulted in a punitive discharge and/or extensive punishment at a court-martial. Therefore, the Board determined that you already received a large measure of clemency when the convening authority agreed to administratively separate you in lieu of trial by court-martial; thereby sparing you the stigma of a court-martial conviction and possible punitive discharge. Finally, the Board concurred with the AO that there is insufficient evidence that all of your misconduct could be attributed to a mental health condition. As explained in the AO, although some of your misconduct could be explained by bipolar symptoms such as mania or severe depression, it is not possible to differentiate what symptoms could have been due to Bipolar versus being under the influence of a substance versus characterological symptoms. Regardless, the Board determined that the mitigation evidence associated with your mental health condition was insufficient to overcome the seriousness of your extensive misconduct.

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.

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,

8/29/2024

