



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

█  
Docket No. 1701-24  
Ref: Signature Date

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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 contentions not previously considered, the Board found it in the interest of justice to review your application. Your current request has been carefully examined by a three-member panel, sitting in executive session on 23 September 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 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, 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)/mental health condition (MHC) (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.

You previously applied to this Board for a discharge upgrade and were denied on 22 April 2019. 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 characterization of service and your contentions that you were repeatedly harassed by a Petty Officer at both active duty stations to which you were assigned, the harassment was due to religious discrimination, and that the longer it went on, the more your work and evaluations suffered, culminating in

exacerbation of PTSD suffered from your duty in ██████████. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application, including your name change order, an advocacy letter from your father, your personal statement, and a letter from a mental health professional.

Based on your assertion that you suffered from a mental health condition while on active duty, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 4 June 2024. The AO noted in pertinent part:

The Petitioner submitted a letter from a Nurse Practitioner dated January 2022. She indicated that she had seen the Petitioner one time, and based on his anecdote, she felt he met criteria for PTSD due to combat in ██████████. 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. His statement is not sufficiently detailed to provide a nexus with his misconduct. Additional records (e.g., mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

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 his misconduct could be attributed to a mental health condition."

In response to the AO, you provided rebuttal evidence, including documentation from ██████████ ██████████ Psychiatry, resulting in revision of the original AO. The revised AO, dated 19 July 2024, concluded, "it is my considered clinical opinion that there is post-service evidence of a temporally remote mental health condition (PTSD). It is not likely that all of his misconduct could be attributed to symptoms of PTSD."

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 three non-judicial punishments, outweighed these mitigating factors. In making this finding, the Board considered the likely negative impact your repeated misconduct had on the good order and discipline of your command, and that you were given opportunities to address your conduct issues but continued to commit misconduct. The Board also found that your conduct showed a complete disregard for military authority and regulations. Additionally, the Board concurred with the revised AO and determined that although there is post-service evidence of a temporally remote a mental health condition (PTSD), it is not likely that all of your misconduct could be attributed to PTSD symptoms." As the AO noted, it is possible that small and non-repetitive periods of UA could have been a result of PTSD symptoms, however, you denied any symptoms of PTSD in your post-deployment screening. The Board further agreed with the revised AO, that it is not likely that all of your misconduct can be attributed to PTSD.

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,

10/15/2024

