



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

█  
Docket No. 5369-24  
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 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 25 November 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, which was previously provided to you. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

You twice previously applied to this Board for a discharge upgrade. You initially applied to the Board contending that mitigating factors of youth and family problems warranted consideration of an upgrade on the basis of clemency and submitted letters of support with respect to your contentions. The Board considered your request on 29 November 2005 and denied it, noting that you had already received considerable clemency in the approval of your request for separation in lieu of trial, which permitted you to escape the potential risk of a punitive discharge and

confinement as well as avoiding a federal conviction and criminal record. You later sought reconsideration with additional statements of support outlining the seriousness of your family situation at the time of your absence. The Board considered this request on 22 December 2015 and again denied your request; finding that the severity of your misconduct – specifically, your prolonged period of UA – significantly outweighed the additional matters you presented in support of your desire for an upgraded characterization of service. The facts of your case remain substantially unchanged.

The Board again carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to, your desire to upgrade your discharge and change your narrative reason for separation. You now contend that your misconduct was the result of undiagnosed post-traumatic stress disorder (PTSD) in addition to the hardship you and your family experienced. For purposes of clemency and equity consideration, you submitted a legal brief and exhibits that included a detailed personal statement, two witness statements submitted with your claim to the Department of Veterans Affairs (VA), and a psychological evaluation.

Because you now contend that post-traumatic stress disorder (PTSD) or another mental health condition affected the circumstances of your discharge, the Board also considered the previously referenced AO. The AO stated in pertinent part:

Petitioner submitted two lay/witness statements from his sisters. He submitted a psychological evaluation dated July 2023 indicating Petitioner likely had PTSD prior to joining the military and that continued home stressors during his service exacerbated his PTSD symptoms. He submitted two character references in support of his claim. 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. 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 sufficient evidence of a post-service mental health condition that is temporally remote to service. There is insufficient evidence that his misconduct could be attributed to a mental health condition.”

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 request to be discharged in lieu of trial by court-martial, 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, although there is evidence of a post-service mental health condition that is temporally remote to your military service, there is insufficient evidence that your misconduct could be attributed to a mental health condition. Therefore, the Board determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not be held accountable for your actions.

More significantly, however, the Board found that, even applying liberal consideration to your contented mental health concerns, you have already received considerable clemency in light

