



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) the racism you experienced had a profound impact on you physically and psychologically, (2) you felt that there was no one in your leadership that you could turn to for help or assistance, (3) you were concerned about retaliation from your peers and superior officers, (4) your safety was always in jeopardy as you were called derogatory names and targeted, and (5) your superior's promised you a discharge upgrade to Honorable; however, your discharge upgrade was ignored due to a pervasive lack of accountability within the ranks amongst leadership. For purposes of clemency and equity consideration, the Board considered the documentation you provided in support of your application.

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 NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded your misconduct showed a complete disregard for military authority and regulations. Further, the Board found that your misconduct was intentional and made you unsuitable for continued naval service. Furthermore, the Board also determined that the evidence of record did not demonstrate that you were not responsible for your conduct or that you should otherwise not be held accountable for your actions. The Board noted that you were provided multiple opportunities to correct your conduct deficiencies during your service; however, you continued to commit additional misconduct. Your conduct not only showed a pattern of misconduct but were likely sufficiently serious to negatively affect the good order and discipline of your command. Additionally, the Board noted that you did not provide any evidence, other than your statement, to substantiate your contentions that you were treated unfairly. Finally, the Board again concurred with the AO that there is insufficient evidence to attribute your misconduct to PTSD or another mental health condition. As explained in the AO, there is no evidence that you were diagnosed with a mental health condition in military service, or that you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. The Board was not persuaded by your new evidence as it not sufficiently detailed to establish clinical symptoms in service or provide a nexus with your 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,

7/10/2024

