



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

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Docket No. 5865-24
3770-23
Ref: Signature Date

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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. Your current request has been carefully examined by a three-member panel of the Board, sitting in executive session on 29 July 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). In addition, the Board considered an advisory opinion (AO) provided by a qualified mental health professional as part of your last application. You were previously provided an opportunity to respond to the AO but chose not to do so.

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.

Your previous discharge upgrade request was denied by this Board on 12 January 2012. Although the Board made some administrative changes to your DD Form 214, they concluded

the evidence did not support a change to your characterization of service. 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 and contentions that: (1) you became a model citizen after your discharge, (2) your co-conspirator received a discharge upgrade, (3) you are being treated by the Department of Veterans Affairs for your PTSD, (4) you were at the wrong place and wrong time, (5) you should not have been with the person committing the robbery, (6) your mind was “messed up” because you had just redeployed from Desert Storm, and (7) you were never offered any mental health assistance. For purposes of clemency and equity consideration, the Board noted you provided advocacy letters that describe post-service accomplishments.

Because you assert the existence of a mental health condition that may mitigate your misconduct, the Board again considered the AO from your previous application. The Board noted you provided no new medical evidence in support of your current application. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly as armed robbery is not a typical mental health symptom and he claims innocence of the charges. Additional records (e.g., post-service mental health records describing the Petitioner’s diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, “it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD or another mental health condition. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition.”

After a 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 civil conviction for robbery, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely discrediting effect it had on the Marine Corps. The Board noted you provided no evidence, other than your statement, that substantiates you were wrongfully convicted of robbery. Therefore, the Board was not persuaded by your arguments of an unjust conviction. Additionally, the Board was not persuaded by your argument that an injustice exists because your co-conspirator allegedly received a discharge upgrade. The Board concluded that each Petitioner’s case is adjudicated based on facts and circumstances unique to each case. Absent evidence that both of the cases are identical, the Board determined per se error or injustice exists simply due to different outcome of cases before this Board. 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 earlier, you provided no new medical evidence to support your contention that your PTSD or

another mental health condition had a nexus with your robbery conviction. 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.

As a result, the Board concluded your conduct constituted a significant departure of that expected of a service member and continues to warrant a BCD. While the Board carefully considered the evidence you submitted in mitigation and commends you on your post-discharge rehabilitation, 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 the 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 is attached 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,

8/23/2024

