



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. 6890-24

Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 2 December 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, 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, dated 17 October 2024, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You previously applied to this Board for a discharge upgrade and were denied on 5 December 2012. 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 for a discharge upgrade and

contentions that: (a) you joined the Navy at age 17 because you wanted to do something bigger than yourself and make your father proud, (b) you were not given any time to grieve the loss of your father, (c) you were dying inside so you started to acting out, (d) you returned from ██████████ ██████████ and got on a fight which ended up with you being put in restrictions so a second time, (e) you stole a Walkman radio and wanted to get caught in order to be discharge and be with your mother, (f) you believe your punishment was too harsh than the actual crime, (g) you want to be seen at a Department of Veterans Affairs hospital because you served your country during war time. For purposes of clemency and equity consideration, the Board noted you provided copies of your medical diagnosis, personal statement, and thirteen character letters of support.

As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during a psychiatric hospitalization in his enlistment. His mental health diagnoses were based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. Temporally remote to his military service, he has received a diagnosis of PTSD that is attributed to military service by a civilian provider. Unfortunately, there is insufficient evidence to attribute his misconduct to a mental health condition. More weight has been given to in-service records that indicate his misconduct preceded his mental health concerns. Additional records (e.g., postservice 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 that there is post-service evidence from a civilian provider of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another 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 three non-judicial punishments and special 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. Additionally, the Board considered the likely negative impact it had on the good order and discipline of your unit. Further, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to a mental health condition. As explained in the AO, your post-discharge diagnosis is temporally remote from your service and more weight was given to your in-service medical records. The Board agreed that additional records may aid in rendering an alternate opinion. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities.

As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant a BCD. 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 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 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,

1/6/2025

