



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

██████████
Docket No. 9452-24
Ref: Signature Date

██████████
██████████
██████████
██████████

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 24 March 2025. 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 relief on 19 October 1993. The summary of your service remains substantially unchanged from that addressed in the Board's previous decision.

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 characterization of service and remove derogatory language from your narrative reason for

service on your DD Form 214. You contend that your behavior and function, while in the service, were negatively affected by TBI, PTSD, and other mental health conditions that were not your fault and beyond your control, and your ability to adequately comply with the requirements, rules, regulations, and circumstances you were confronted with in the service was negatively affected and diminished. For purposes of equity and clemency consideration, the Board considered the evidence you provided in support of your application; including medical record documents and a legal letter.

As part of the Board's review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO, dated 6 February 2025. The AO noted 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 received extensive treatment for mental health concerns from the VA, who have not assigned service connection to his disabilities.

Although his mental health concerns, including PTSD and other mental health conditions, have been attributed to military service by VA clinicians, there are some inconsistencies in his report over time that raise doubt regarding his candor or the reliability of his recall. Additionally, while he attributes his PTSD symptoms to combat exposure during Operation Desert Storm, the majority of his misconduct occurred prior to this event, and cannot be attributed to a mental health condition incurred as a result of combat.

Although there are some references to TBI in the extensive VA records, there is no evidence of recurrent symptoms requiring specific treatment. There is insufficient evidence to consider that a purported TBI may have influenced the Petitioner's behavior in service.

Additionally, it is difficult to attribute financial mismanagement to mental health concerns incurred during military service when he had a history of writing bad checks prior to enlistment.

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 that there is post-service evidence from VA providers of diagnoses of PTSD and other mental health concerns that may be attributed to military service. There is insufficient evidence of TBI that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD, TBI, or another mental health condition."

In response to the AO, you submitted additional materials regarding the circumstances of your case. After reviewing your rebuttal evidence, the AO remained unchanged. 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 six non-judicial punishments and two civil convictions, 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. The Board observed you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct; which led to your General (Under Honorable Conditions) (GEN) discharge. Your conduct not only showed a pattern of misconduct but was sufficiently pervasive and serious to negatively affect the good order and discipline of your command. Additionally, the Board concurred with the AO and determined that, although there is post-service evidence from the VA that you are diagnosed with PTSD and other mental health concerns that might be attributed to military service, there is insufficient evidence of TBI that may be attributed to military service, and insufficient evidence, overall, to attribute your misconduct to TBI or a mental health condition. As explained in the AO, it is difficult to attribute financial mismanagement—an element of your misconduct—to mental health concerns. The Board additionally agreed with the AO that inconsistencies in your report over time raise doubt regarding your candor or reliability of your recall. Lastly, as the AO pointed out, although you attribute your PTSD symptoms to combat exposure during Operation Desert Storm, the majority of your misconduct occurred prior to the event and, thus, cannot be attributed to a mental health condition incurred as a result of combat. Finally, as the AO also noted, the Board agreed that additional records (e.g., post-service mental health records describing your diagnosis, symptoms, and their specific link to your misconduct) may aid in rendering an alternate opinion. In the end, the Board opined, given your many instances of misconduct, you were fortunate to have been granted a GEN characterization.

As a result, the Board determined that there was no impropriety or inequity in your discharge and concluded that your misconduct and disregard for good order and discipline clearly merited your discharge. 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 in your present application 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,

4/4/2025

