



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: 2936-21
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.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your application on its merits. A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 24 September 2021. 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 this 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 the 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), and the relevant Advisory Opinion.

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.

You enlisted in the Navy and began a period of active duty on 22 June 2000. Your evaluation for the period of 29 August 2000 to 15 July 2001 reflects that your attention to detail earned you the job of CPO Tiger Team member where you took care of numerous projects in the CPO Mess. On 13 December 2000, you received nonjudicial punishment (NJP) for failure to obey a lawful

order. On 7 March 2003, you were found guilty at summary court martial for a period of unauthorized absence (UA) from 14 January to 7 March 2003, and two specifications of missing ship's movement. On 25 March 2003, you were notified of administrative separation proceedings against you on the basis of drug abuse and commission of a serious offense; you subsequently waived your right to appear before an administrative separation board. Commanding Officer, USS █ recommended that you be discharged on the basis of misconduct. On 2 April 2003, you were discharged on the basis of Misconduct Due to Drug Abuse, and received an other than honorable discharge and a reentry (RE) code of RE-4.

In your application for correction, you request an upgrade to your other than honorable discharge. You state that before your separation you were going through an illness in your family, your mother had breast cancer and you were in despair. You state that you told your superiors of this and were issued a general discharge. You assert that you told your command that you wanted to stay at the last minute, and your discharge characterization was changed to an other than honorable characterization of service. You contend that you were a good Sailor during your time and were given an early promotion and a NAM during your service. You simply had a family tragedy and made a mistake. You request an upgrade to help you with your future.

As part of the review process, a Licensed Clinical Psychologist reviewed your request and issued an Advisory Opinion dated 9 August 2021. The Advisory Opinion considered your claim that you were in despair because your mother had breast cancer and that your superiors changed the recommendation for a general discharge to an other than honorable characterization of service after you informed them that you wished to stay in the Navy. The Advisory Opinion noted that you did not provide clarifying information about how you met the criteria for a mental health condition. The Advisory Opinion determined that the preponderance of available evidence failed to establish that you suffered from a mental health condition at the time of your military service or that your in-service misconduct could be mitigated by a mental health condition. The Advisory Opinion was provided to you, and you were given 30 days in which to submit a response. When you did not provide a response within the 30-day timeframe, your case was submitted to the Board for consideration.

The Board 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 statement that you were suffering from distress due to illness within your family and your contention that your command originally recommended a general discharge but then changed the characterization of service to other than honorable. With regard to your claim of a mitigating mental health condition, the Board reviewed the analysis and determinations of the Advisory Opinion and substantively concurred with its conclusion that the available evidence does not support a finding that you suffered a mental health condition at the time of your military service that mitigated your misconduct. The Board reviewed your claim of originally being recommended for a general characterization of service, but noted that on 29 March 2003, you were notified of the possibility of an other than honorable characterization. After the notice and awareness of the possibility of a characterization of service less favorable

than general, you nonetheless waived your right to appear before an administrative separation board. The Board determined that based on your NJP and summary court martial conviction, along with your notice of administrative separation on the basis of both Drug Abuse and Commission of a Serious Offense, that the other than honorable discharge you received was issued without error or injustice. Accordingly, the Board determined that corrective action is not warranted.

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,

10/18/2021

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Executive Director

Signed by: █