



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: 3272-21

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 15 October 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.

You enlisted in the Navy and began a period of active duty on 3 March 1998. On 5 March 1998, you signed a Statement of Understanding for the MGIB, acknowledging your understanding that you must receive an honorable characterization of service to establish entitlement to the MGIB. On 22 September 1998, you were arrested for suspicion of attempting to shoplift approximately nine compact disks from the Navy Exchange (NEX), with seven to eight disks allegedly taken earlier. On 2 October 1998, your NEX privileges were suspended for one year. On 28 October 1998, you received nonjudicial punishment (NJP) for violating Article 92 (larceny, wrongful appropriation). On 14 March 1999, you were arrested at the NEX on suspicion of criminal trespass. On 15 March 1999, your NEX privileges were suspended for one year. In October

1999, you admitted to impersonating a Petty Officer; on 4 November 1999 you received NJP for wrongfully impersonating a Petty Officer with the intent to commit fraud, and failure to obey a lawful order (cohabitating with a member of the opposite sex in the barracks). On 8 January 2000, you were arrested in the NEX; your NEX privileges were suspended on 12 January 2000. On 16 February 2000, you received NJP for wrongfully entering the NEX and failure to go to your appointed place of duty. You appealed your NJP in March 2000. Your Commanding Officer reviewed your NJP appeal and forwarded a recommendation for disapproval. On 3 April 2000, you received NJP for allowing a visitor to remain in your room beyond visiting hours and for not being present in your barracks room as required. On 26 April 2000, you were notified of administrative separation proceedings against you on the basis of Pattern of Misconduct. On 2 May 2000, your Commanding Officer recommended that you be separated with a general discharge and stated that you were given every opportunity to comply with Navy standards of conduct and failed. On 4 May 2000, you were discharged from the Navy on the basis of misconduct and received a general discharge and a reentry (RE) code of RE-4.

In your application for correction, you request an upgrade from a general to an honorable discharge, removal of the narrative reason for separation of misconduct, a change to your RE-4 to an RE-1, and that your remarks section be changed to add the phrase that you “Contributed to MGIB \$1200.00.” You state that you suffered from undiagnosed, misdiagnosed and untreated mental health conditions including stress-related depression resulting from the experience of death of a family member. You provide supporting information to include a death certificate, information about your achievements, character letters and letters of recommendation, and decree and certificate information pertaining to your educational successes. You additionally contend that: (a) your grandmother had serious health issues in 1999 to 2000, and passed away in January 2000; (b) your grandmother was a mother figure for you and you state you did not return home in time; (c) you note that you were only 18 years old and contend that you were unable to communicate your situation to your supervisor; (d) your health and physical well-being suffered and your work performance declined; (e) you assert that you were punished for experiencing mental health trauma and depression; and (f) since your discharge you have earned scholarships, your Teaching Provisional License in 2000, a Professional Educator’s License in █, a Master of Aeronautical Science, your Special Education License, and Civil Air Patrol qualifications.

As part of the review process, a Licensed Clinical Psychologist reviewed your request and issued an Advisory Opinion dated 8 September 2021. The Advisory Opinion noted that your Official Military Personnel File did not contain markers of a mental health condition. The Advisory Opinion further noted that the misconduct reflected in your service record (including larceny and wrongful appropriation) is not typical of misconduct related to a mental health condition. The Advisory Opinion concluded that the preponderance of objective 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 contention that you were suffering from a mental health condition that mitigated your in-service misconduct. The Board also considered your youth, your personal circumstances, the loss of your grandmother, your statement regarding lack of support from your chain of command, and your post-discharge achievements. The Board also considered the analysis and conclusions of the Advisory Opinion, and concurred substantively with its determination that the evidence you provided did not establish that you suffered from a mental health condition at the time of your military service that may have mitigated your misconduct. Given the nature of your misconduct to include larceny, wrongful appropriation, repeatedly returning to the NEX after the suspension of your NEX privileges, and wrongfully impersonating a Petty Officer, the Board felt that a general rather than honorable characterization of service was warranted. The Board determined that the nature and frequency of your misconduct supports the general discharge and that the narrative reason for separation of "Misconduct" and RE-4 were likewise issued without error or injustice due to the ongoing misconduct reflected in your record. The Board noted that while you do appear to have you signed a Statement of Understanding for the MGIB, entitlement to the MGIB was contingent upon receipt of an honorable discharge. Absent an upgrade to an honorable characterization of service, and given that your Certificate of Release or Discharge from Active Duty (DD Form 214) currently reflects a general discharge, the Board determined that adding a reference to the MGIB contribution in the Remarks section could create an inaccurate presumption of entitlement to the MGIB. Therefore, given that your characterization of service was not upgraded and you do not appear to have earned entitlement to the MGIB in accordance with the terms outlined in the 5 March 1998 Statement of Understanding, the Board concluded that your Remarks section does not merit correction.

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,

11/8/2021

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Executive Director

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