



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: 4426-21
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 you did not file your application in a timely manner, the statute of limitations was waived in accordance with the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo). A three-member panel of the Board, sitting in executive session, considered your application on 7 December 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). Additionally, the Board also considered the advisory opinion (AO) furnished by a qualified mental health provider, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you did not 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.

You originally enlisted in the Navy on 8 October 1996. Your pre-enlistment medical examination on 18 July 1996 and self-reported medical history noted no psychiatric or neurologic conditions or symptoms.

On 13 May 1998 you received non-judicial punishment (NJP) for failing to obey a lawful order and damaging military property. You did not appeal your NJP. On 20 May 1998 your command issued you a "Page 13" counseling warning (Page 13) for driving a government vehicle without a valid driver's license and getting in a motor vehicle accident causing substantial damage to the government vehicle. The Page 13 warned you that any further deficiencies in performance and/or conduct may result in disciplinary action and in processing for administrative separation.

On 12 March 1999 you received NJP for making and uttering two worthless checks by dishonorably failing to maintain sufficient funds. You did not appeal your NJP. On 2 September 1999 you received NJP for unauthorized absence (UA). You appealed your NJP but your appeal was denied by Commander, Navy Region Hawaii.

On 18 October 1999 you were notified that you were being processed for an administrative discharge by reason of misconduct due to the commission of a serious offense, and misconduct due to a pattern of misconduct. You exercised your rights to consult with counsel and to General Court-Martial Convening Authority review of your separation. In the interim, your separation physical examination on 29 October 1999 and self-reported medical history noted no psychiatric or neurologic conditions or symptoms. Ultimately, on 24 November 1999 you were discharged from the Navy for misconduct with a general (under honorable conditions) (GEN) characterization of service and assigned an RE-4 reentry code.

As part of the Board review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records and issued an AO dated 19 October 2021. The Ph.D. initially noted that your active duty records did not contain evidence of a mental health diagnosis. The Ph.D. also noted that there is no evidence in any post-service records to indicate a mental health diagnosis. The Ph.D. determined that there is no evidence to support a contention that your misconduct should be attributed to a mental health diagnosis. The Ph.D. concluded by opining that there was insufficient evidence that you incurred a mental health condition on active duty and there was insufficient evidence to attribute your misconduct to a mental health condition.

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 contentions that: (a) when you were discharged you were pregnant and discriminated against; (b) you tried to tell your command you were being sexually harassed but no one would listen to you; (c) you gave up and allowed them to let you leave the service; and (d) you were not a problem Sailor. However, given the totality of the circumstances, the Board determined that your request does not merit relief.

In accordance with the Kurta, Hagel, and Wilkie Memos, the Board gave liberal and special consideration to your record of service, and your contentions about any traumatic or stressful events you experienced and their possible adverse impact on your service. However, the Board concluded that there was no convincing evidence that you suffered from any type of mental health condition while on active duty, or that any such mental health condition was related to or mitigated the misconduct that formed the basis of your discharge. As a result, the Board

concluded that your misconduct was not due to mental health-related symptoms. Moreover, the Board observed that you did not submit any clinical documentation or treatment records to support your mental health claims despite a request from BCNR on 30 July 2021 to specifically provide additional documentary material. The Board determined the record clearly reflected that your active duty misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should otherwise not be held accountable for your actions.

Additionally, the Board determined, contrary to your contentions, that the evidence indicated you were not subject to any unwanted harassment or discrimination. The Board determined after reviewing your counseling records, the NJP preliminary inquiry report (with enclosures), and the NJP report that the material and undisputed facts are vastly different from your contentions, and that your command was justified in processing you for administrative separation based on your pattern of misconduct.

The Board also observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average in conduct was 1.0 based on the available evaluations in your service record. Navy regulations in place at the time of your discharge required a minimum trait average of 2.0 in conduct (proper military behavior), for a fully honorable characterization of service. The Board concluded that your conduct marks during your active duty career were a direct result of your pattern of serious misconduct which further justified your OTH characterization of discharge.

Additionally, the Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board determined that characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor. Lastly, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating VA benefits, or enhancing educational or employment opportunities. The Board carefully considered any matters submitted regarding your post-service conduct and accomplishments, however, even in light of the Wilkie Memo and reviewing the record holistically, the Board still concluded that given the totality of the circumstances your request does not merit relief. Accordingly, the Board determined that there was no impropriety or inequity in your discharge, and even under the liberal consideration standard for mental health conditions, the Board concluded that your pattern of serious misconduct merited your receipt of an OTH.

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,

12/23/2021

[REDACTED]

Executive Director

Signed by: [REDACTED]