



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. 7788-21
Ref: Signature Date

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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 limitation 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 9 February 2023. 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, and the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo) (collectively the "Clarifying Guidance"). The Board also considered the 29 December 2022 advisory opinion (AO) from a qualified medical professional, a copy of which was provided to you and to which you did not provide a response.

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.

A review of your record shows that you enlisted in the Navy and commenced a period of active duty on 30 December 1997. On 19 February 2000, you received nonjudicial punishment for conspiracy, desertion, unauthorized absence, and missing ship's movement. The investigation underlying your nonjudicial punishment revealed that it was based on your leaving your ship in a foreign port with two shipmates, renting an apartment in a foreign city, and remaining behind as your ship left port. You and your shipmates were eventually apprehended by local U.S. Navy personnel. On 3 March 2000, you were notified of the initiation of administrative separation processing and your rights in connection therewith. On 15 March 2000, you were discharged with an other than honorable characterization of service.

In March 2012, you submitted an application with the Naval Discharge Review Board (NDRB) seeking an upgrade to your discharge characterization. On 8 March 2013, the NDRB denied your request citing

medical records that reflected your dissatisfaction with the Navy prior to leaving your command without authority and missing ship's movement. According to the NDRB, there was no record or evidence that you were not responsible for your actions or should not be held accountable.

In your petition, you request that your discharge characterization be changed from other than honorable based on misconduct, to other than honorable based on general/medical reasons. In support of your request, you contend that you suffered from mental health conditions, which mitigated your misconduct and, for which you should receive a medical discharge.

To assist it in reviewing your petition, the Board obtained the AO, which was considered unfavorable to your position. The AO reviewed all materials associated with your petition, including your service and medical records, as well as your prior petition, and all of the material that you provided in support of your petition. The AO described your history of seeking medical assistance for mental health concerns while you were on active duty, and found:

In all situations, Petitioner was deemed fit for full duty and responsible for her actions. There were no indications from the evaluating mental health professionals that Petitioner was considered to have an unfitting mental health condition/disorder that would have warranted referral to a Medical Evaluation Board, or the Physical Evaluation Board. The final psychiatric evaluation by the [REDACTED] psychiatrist, after review of all available records, patient's reported clinical history, and comprehensive examination resulted in a diagnosis of Personality Disorder and recommendation for expeditious administrative discharge due to Petitioner's personality disorder condition, chronic risk for harm to self or others, and unsuitability for continued service. During the investigation into Petitioner's misconduct, command disciplinary procedures, and subsequent administrative processing for separation, there were no issues identified for which the chain of command felt warranted referral back to mental health for reevaluation of her mental health condition.

The AO also reviewed the post-service medical records that you provided with your petition, and explained that the "records do not describe occupational impairment or unfitness for duty from any mental health condition during [your] military service, nor establish a nexus between any mental health conditions and [your] in-service misconduct." In view of the foregoing, the AO concluded, "the preponderance of objective clinical evidence provides insufficient support for Petitioner's contention that at the time of her discharge she was unfit for continued military service and should have been medically retired."

The Board carefully reviewed all of your contentions and the material that you submitted in support of your petition, and the Board disagreed with your rationale for relief. In reaching its decision, the Board observed that, in order to qualify for military disability benefits through the Disability Evaluation System with a finding of unfitness, a service member must be unable to perform the duties of their office, grade, rank or rating as a result of a qualifying disability condition. Alternatively, a member may be found unfit if their disability represents a decided medical risk to the health or the member or to the welfare or safety of other members; the member's disability imposes unreasonable requirements on the military to maintain or protect the member; or the member possesses two or more disability conditions which have an overall effect of causing unfitness even though, standing alone, are not separately unfitting.

In reviewing your record, the Board concluded the preponderance of the evidence does not support a finding that you met the criteria for unfitness as defined within the disability evaluation system at the time of your discharge. At the outset, the Board concurred with the findings of the AO, finding that it sufficiently considered the relevant factors and reached a reasonable conclusion. Notably, the Board observed no evidence that you had any unfitting condition while on active duty. While you provided


medical records describing post-service mental health conditions, as described by the AO, there is no evidence that, while you were on active duty, any medical provider considered your conditions to warrant referral to a medical board for a determination of fitness for duty within the disability evaluation system. Even assuming you were being processed due to a disability, while you were in service, disability regulations directed misconduct processing to supersede disability processing.

While you did not request it directly, your petition may be construed such that you alternatively seek an upgrade in your discharge characterization of service based on your mental health conditions, and that you believe such mental health conditions should mitigate the misconduct that you engaged in while on active duty. In reviewing this portion of your request, the Board applied the Clarifying Guidance to your petition in light of your mental health conditions. Despite its application of Clarifying Guidance and providing liberal consideration to the assertions in your current petition, the Board did not believe a discharge upgrade was appropriate. The Board reasoned that there is insufficient evidence to demonstrate that your misconduct could be attributed to a mental health condition. Rather, upon review of the in-service psychiatric evaluation, you were in fact diagnosed with a Personality Disorder, and there was an absence of any traumatic event or the like on which to base trauma-based mitigation factors. Additionally, the Board considered the seriousness of your misconduct and the likely negative effect it had on the good order and discipline of your command. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an other than honorable characterization. Even in light of the Wilkie Memo and reviewing the record 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. 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,

2/22/2023

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Deputy Director

Signed by: 