



**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: 1306-22  
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 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 6 June 2022. 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). The Board also considered an advisory opinion (AO) from a qualified mental health professional, which was previously provided to you. Although you were afforded an opportunity to submit a rebuttal, you did not do so.

You enlisted in the Navy and began a period of active duty on 7 August 2000. On 9 May 2001, you received your first nonjudicial punishment (NJP) for two specifics of unauthorized absence (UA) and a failure to obey a lawful order. On 10 May 2001, you were also issued an administrative counseling retaining you in the naval service yet documenting the aforementioned deficiencies in your performance and conduct further advising you that subsequent violation of the UCMJ, conduct resulting in civilian conviction, or deficient conduct or performance of duty could result in administrative separation under Other Than Honorable (OTH) conditions. On 21 December 2001, you received a second NJP for two specifications of UA and eight specifications of uttering worthless checks by failing to maintain funds. On 21 December 2001, you were

notified of your pending administrative separation as a result your misconduct by reason of a pattern of misconduct (POM) and commission of a serious offense (COSO), at which time you waived your right to consult with military counsel and have your case presented to an administrative discharge board. On 15 January 2002, the separation authority directed you be discharged with an OTH characterization of service by reason of POM and, on 20 January 2002, you were so discharged.

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 desire for a discharge upgrade and contentions that you were suffering from post-partum depression and unable to manager your family care plan or maintain your work schedule. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

In connection with your assertion that you suffered from a mental health condition (MHC), the Board requested, and reviewed, the AO. The AO reviewed your service record as well as your petition and the matters that you submitted. According to the AO:

Among available records, there is no evidence of a mental health diagnosis in military service. Throughout her disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. Unfortunately, she has provided no medical evidence in support of her claims. Her personal statement is insufficient to establish clinical diagnosis or a nexus with her misconduct. Additional records, (e.g., service medical records describing the Petitioner's diagnosis and symptoms in service, or records detailing her misconduct) are required to render an alternate opinion.

The AO concluded, “[b]ased on the available evidence, it is my clinical opinion that there is insufficient evidence of a mental health condition that could be attributed to military service. There is insufficient evidence that her misconduct could be attributed to a mental health condition.”

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the negative impact it, more likely than not, had on your command's good order and discipline. Further, the Board concurred with the AO there is insufficient evidence that your misconduct could be attributed to a mental health condition. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization. After applying liberal consideration, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting clemency in the form of an upgraded characterization of service. 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,

6/23/2022

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Executive Director

Signed by: █