



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

█
Docket No: 1339-22
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 Board waived the statute of limitation 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 May 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 the 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 to 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). The Board also considered the advisory opinion (AO) furnished by a licensed clinical psychologist, which was previously provided to you. You were afforded an opportunity to submit a rebuttal to the AO, but did not.

You enlisted in the Navy and began a period of active service on 26 July 2000. Your records reflect as of 26 November 2001 that, while stationed at Marine Corps Base █, █, you were married to an active duty spouse in the Army. You were counseled for performance deficiencies due to your fitness test standards on 26 November 2001, 4 June 2002, and 3 December 2003. In 2004, you requested separation in lieu of trial. As a result, you received nonjudicial punishment for Article 121, larceny and wrongful appropriation, and were processed for administrative separation in lieu of trial by court-martial. You were discharged, on 23 April 2004, with an Other Than Honorable (OTH) characterization of service.

In a post-discharge request to the Naval Discharge Review Board (NDRB) reviewed on 28 April 2008, you contended that your discharge was unjust because the charges were based on a marital dispute. As of 1 December 2021, the Department of Veterans Affairs (VA) has granted you a service connected disability rating of 100% and your VA medication list includes prescriptions for █ and “█.”

Because you contend post-traumatic stress disorder (PTSD), unspecified mental health conditions, and military sexual trauma, the Board also considered the AO, which stated in pertinent part:

Petitioner’s OMPF did not contain evidence of a diagnosis of a mental health condition or reported psychological symptoms/behavioral changes indicative of a diagnosable mental health condition. In contrast, evidence submitted by Petitioner confirmed service connection with the VA for an unknown disability; however, it did not provide enough markers to establish an onset and development of mental health symptoms or identify a nexus with her misconduct. Additionally, Petitioner, in her application, provided alternative reasoning for her misconduct (i.e., she was mad).

The AO concluded, “[b]ased on the available evidence, it is my considered clinical opinion there is insufficient objective evidence to establish an association between Petitioner’s reported █ (i.e., █ and █) with her contended traumatic stressor (i.e., █), or to determine possible mitigation of her in-service misconduct.

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. This included, but was not limited to, your desire to upgrade your discharge and your contentions that you received good evaluations, were committed to your duties, and earned a Good Conduct Medal while enduring a volatile and toxic marital environment with a physically and sexually abusive service-spouse whom you eventually divorced due to his infidelity. You related that your spouse had left signed checks prior to his 2001 deployment for your use in paying joint bills. You further describe that, at some point, you discovered his extramarital affair, were angry, and used the checks to withdraw or commit funds for additional purchases other than those he had approved, which resulted in him accusing you of stealing his money. You further contend that your defense counsel was a Marine judge advocate which you felt impacted his representation of you as a Navy sailor, making you feel that he was taking your husband’s side against you in a “he said, she said” situation, and that you only requested separation in lieu of trial because you were pregnant, you did not want to be pregnant and confined in the brig, and you felt like you were losing your mind.

After a thorough review of your available records and contentions, the Board concluded the potentially mitigating factors you submitted for consideration were insufficient to outweigh the misconduct evidenced by your NJP and separation in lieu of trial. The Board concurred with the AO and, although sympathetic to your traumatic experience, concluded that there was

insufficient objective information to provide the necessary context to determine whether an error or injustice occurred. Specifically, the Board observed that, although marital property might potentially negate an allegation of larceny of joint income between spouses, the available records lack information regarding the date of the alleged offense to determine whether you were still married at the time you used his checks; absent evidence to the contrary, the Board concluded that you were charged with larceny because you had either divorced or legally separated from your spouse at the time you used the check or checks to withdraw his funds. The Board also noted that your detailed counsel had an ethical obligation to provide legal advice in your best interests and is presumed to have been competent barring proof of ineffective assistance or other supporting evidence. Finally, the Board considered that you already received a large measure of mitigation when the Navy accepted your request to be separated in lieu of trial by court-martial. By avoiding a trial by court-martial, you escaped the stigma of a court-martial conviction and, likely, a punitive discharge. 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, the Board determined that your request does not warrant relief.

You are entitled to have the Board reconsider its decision upon the 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 is attached 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,

5/24/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]