



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: 1824-22
Ref: Signature Date

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Dear █

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 13 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 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 qualified mental health provider, which was previously provided to you. Although you were afforded the opportunity to submit a 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 enlisted and began a period of active duty in the Navy on 6 November 1990. On 23 August 1991, you received nonjudicial punishment (NJP) for a three day unauthorized absence in violation of Article 86, Uniform Code of Military Justice (UCMJ). Your second NJP occurred, on 25 October 1991, for nine specifications of failure to go to your place of duty, failure to obey a lawful order from a superior commissioned officer, and two specifications of failure to obey a lawful order and regulation in violation of Articles 86, 90, and 92, UCMJ. On 31 October 1991, you were

notified of administrative separation processing by reason of misconduct due to commission of a serious offense. On 7 November 1991, you waived your procedural right to request an administrative discharge board and were discharged, on 3 January 1992, with an Other Than Honorable (OTH) characterization of service.

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 to upgrade your discharge and contentions that you are a Gulf War veteran and that, post-discharge, you did not transition well into civilian life, that within one year of discharge you were hospitalized in a psychiatric facility due to no fault of your own, that you received poor civilian legal counsel who advised you to waive the ADB and instead, submit a statement, that your commanding officer stated you were “not motivated enough to be in his Navy” since you waived an ADB and that because of this you received an automatic OTH, that you believe no one read the statement you submitted at the time of your administrative separation processing, that you possessed excellent medical skills from “A” school and experienced two medical conditions in boot camp but chose to stay and finish, that these conditions were extreme psoriasis and stress fractures in both ankles, and that you experienced personal trauma while stationed at your first duty station, the experience has had lasting effects on your life, and the experience led to your discharge. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

The Board also relied on the AO in making its determination. The AO stated in pertinent part:

There is no evidence that she was diagnosed with a mental health condition in military service. During her enlistment, she was properly referred and evaluated for mental health concerns over two medical encounters. The absence of clinical diagnosis was based on observed behaviors and performance during her period of service, the information she chose to disclose to the mental health clinician, and the psychiatric evaluation as documented in her service records. Unfortunately, she has provided no medical evidence to support her claims, as there is no indication that her substance use treatment is related to her military service. Her personal statement is not sufficiently detailed to establish a clinical diagnosis or provide a nexus with her misconduct. Additional records (e.g., post-service mental health records describing the Petitioner’s diagnosis, symptoms, and their specific link to her misconduct) would aid in rendering an alternate opinion.

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

Based upon this review, the Board concluded that the potentially mitigating factors in your case were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your two NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact it had on your command’s good order and discipline. Additionally, the Board concurred with the AO that there is

insufficient evidence that your misconduct could be attributed to PTSD or another 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. While the Board commended your post-discharge rehabilitative accomplishments, they concluded this was insufficient to overcome your history of misconduct while on active duty. Therefore, 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,

7/1/2022

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Executive Director

Signed by: █