



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

█  
Docket No: 2217-22  
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 19 August 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, 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 chose not to do so.

You enlisted in the Marine Corps and commenced active duty on 28 May 2002. Your pre-enlistment physical examination, on 12 February 2002, and self-reported medical history both noted no neurologic or psychiatric conditions or symptoms.

On 30 January 2003, you received non-judicial punishment (NJP) for assaulting another Marine. You appealed your punishment but your NJP appeal was denied. The same day your command issued you a “Page 11” counseling warning (Page 11) documenting your NJP. The Page 11 expressly advised you that a failure to take corrective action may result in administrative separation or limitation of further services. You did not submit a Page 11 rebuttal statement.

On 24 March 2003, your command issued you a Page 11 warning documenting your disrespectful attitude and gesture towards senior non-commissioned officers. The Page 11 expressly advised you that a failure to take corrective action may result in administrative separation or limitation of further services. You did not submit a Page 11 rebuttal statement.

On 15 April 2003, you were involved in a purported assault in the barracks that was the subject of an NJP hearing on 6 November 2003. Although you were found guilty, you appealed your punishment. Your appeal was granted and the NJP was set aside.

On 11 May 2004, your command issued you a Page 11 warning documenting multiple deficiencies. You were counseled for: (a) your contemptuous attitude toward military discipline, customs, courtesy, and authority, (b) your continued display of a “street wise” mentality and refusal to conform to military standards, (c) making unsubstantiated allegations of child abuse and sexual harassment, which appeared to have been done out of vindictiveness, (d) failing to report to court for a traffic violation, (e) reporting a suspicious larceny, and (f) appearing in the blotter for a neighborhood dispute at your government quarters. You also acknowledged that you were being processed for administrative separation.

On 11 June 2004, your command notified you that were being processed for an administrative discharge by reason of misconduct due to a pattern of misconduct. You consulted with counsel and elected your rights to submit a written statement to the Separation Authority and to request an administrative separation board. On 1 August 2004, you withdrew your request for an administrative separation hearing. Ultimately, on 24 September 2004, you were discharged from the Marine Corps for misconduct with an Other Than Honorable (OTH) discharge and assigned an RE-4 reentry code.

On 4 October 2007, the Naval Discharge Review Board (NDRB) denied your discharge upgrade relief. The NDRB determined that your discharge was proper as issued and no change was warranted. On 17 May 2021, the BCNR denied your initial petition for relief. You did not proffer any mental health considerations with your BCNR petition.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warranted relief in your case in accordance with the Hagel, Kurta, and Wilkie Memos. These included, but were not limited to: (a) your discharge was unfair at the time, (b) your discharge was procedurally defective, (c) the discharge is unfair now, and (d) significant racial disparity and bias existed. For purposes of clemency consideration, the Board noted you

provided advocacy letters but no supporting documentation describing post-service accomplishments.

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 21 June 2022. The Ph.D. stated in pertinent part:

There is no evidence Petitioner was diagnosed with a mental health condition during her military service. She did not provide any mental health/medical documentation in support of her contention. Her claim of PTSD is lacking sufficient detail regarding symptoms experienced and their relation to her misconduct. Furthermore, Petitioner's statements (in-service and post-service) provided alternative reasoning for her misconduct (i.e., self-defense). 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 Ph.D. concluded, "[b]ased on the available evidence, it is my considered clinical opinion, there is insufficient evidence of PTSD that may be attributed to military service, or that her in-service misconduct could be attributed to PTSD."

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP and multiple counselings, outweighed these mitigating factors. In accordance with the Hagel, Kurta, 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 concurred with the AO and 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 PTSD or other 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 28 March 2022, to specifically provide additional documentary material. Additionally, the Board concluded that you did not provide any convincing evidence to corroborate or substantiate any of your contentions and/or grievances involving sexual harassment, toxic leadership, physical assault and abuse, reprisal, and racial discrimination. Even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your misconduct outweighed any and all mitigation offered by such mental health conditions. The Board determined the record clearly reflected that your misconduct was willful and intentional 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 not be held accountable for your actions.

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 generally warranted for misconduct and 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 Marine. Lastly, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. As a result, the Board determined that there was no impropriety or inequity in your discharge, and even under the liberal consideration standard, the Board concluded that your serious misconduct clearly merited your receipt of an OTH characterization, and that your separation was in accordance with all Department of the Navy directives and policy at the time of your discharge. The Board carefully considered any matters submitted regarding your character, however, even in light of the Wilkie Memo and reviewing the record holistically, the Board still concluded that insufficient evidence of an error or injustice exists to warrant 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,

8/23/2022

