



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: 2510-22
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 25 July 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). As part of the Board review, a qualified mental health professional reviewed your request and provided the Board with an Advisory Opinion (AO) on 6 June 2022. You were provided an opportunity to respond to the AO, but chose not to do so.

You enlisted in the Navy and began a period of active duty on 22 January 1990. On 6 June 1990, you received your first nonjudicial punishment (NJP) for a period of unauthorized absence (UA) from 25 to 29 May 1990. On this date, you were also counseled regarding the UA. The counseling warned you that you were being retained in the naval service but advised you that subsequent violation(s) of the UCMJ (uniform code of military justice) or conduct resulting in civilian conviction could result in an administrative separation under Other Than Honorable (OTH) conditions. On 22 June 1990, you were "dropped" from hospital corpsman accession 'A' school for lack of comprehension. The following day, on 23 June 1990, you commenced a second period of UA which lasted until you surrendered on 14 January 1991 (205 days).

On 14 February 1991, administrative remarks documented that you did not desire to remain in the naval service. On 25 February 1991, you submitted a request for an OTH discharge in lieu of trial by court-martial for your aforementioned UA. On 11 March 1991, a medical evaluation documents you were considered competent and fully responsible for your behavior.

Unfortunately, the documents related to your administrative separation are not in your official military personnel file (OMPF). In this regard, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary (as is the case at present), will presume that they have properly discharged their official duties. Your Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that you were separated from the Navy, on 20 March 1991, with an OTH characterization of service, your narrative reason for separation is "Separation in Lieu of Trial by Court-Martial," your separation code is "KFS," and your reenlistment code is "RE-4."

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 incurred a mental health condition as a result of military service. In addition, the Board considered your assertions, "I was never given an explanation on how the enlistment process works. I was in the delayed entry program and did not swear in yet and was given false information regarding my status. While serving I went for mental health counseling and was denied leave after a mix up of my leave paperwork. The emotional stress that I was under forced me to take matters into my own hands to preserve my mental well-being. I am still in counseling to this day because of the treatment I received while in the Navy." For purposes of clemency consideration, the Board noted you provided advocacy letters but no supporting documentation describing post-service accomplishments.

Based on your assertion that you incurred a mental health condition as a result of military service, which might have mitigated your discharge character of service, a qualified mental health professional reviewed your request for correction to your record and provided the Board with the AO. The AO stated in pertinent part:

There is no evidence that she was diagnosed with a mental health condition in military service, or that she exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. During her disciplinary processing, she was evaluated by a military psychologist and received no mental health diagnosis. This absence of diagnosis was based on observed behaviors and performance during her period of service, the information she chose to disclose, and the psychological evaluation performed by the mental health clinician. She has provided no post-service medical evidence in support of her claims. Unfortunately, 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 his 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 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 that your misconduct, as evidenced by your nonjudicial punishment and discharge request in lieu of trial by court-martial, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Further, the Board considered that you already received a large measure of clemency when the Navy accepted your discharge request in lieu of trial by court-martial; thereby avoiding the stigma associated with a conviction and likely punitive discharge. Finally, the Board concurred with the AO that there is insufficient 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. While the Board commended your post-discharge good character, 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,

8/8/2022

