



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: 2616-22
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 8 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). As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an Advisory Opinion (AO) on 29 June 2022. You were provided an opportunity to respond to the AO but chose not to 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 in the U.S. Navy and commenced a period of active duty on 30 November 1998. From 8 August 1999 through 10 October 2001, you were counseled 16 times for a variety of infractions from your poor performance and lack of responsibilities to unacceptable behavior. On 23 November 2001, you received your nonjudicial punishment (NJP) for disrespect towards a superior commission officer. Following this NJP, you were issued administrative remarks which documented your deficiencies and further advised subsequent violation(s) of the UCMJ (Uniform Code of Military Justice) or conduct resulting in civilian conviction(s) could result in an administrative separation under Other Than Honorable (OTH) conditions.

On 25 November 2001, you were referred for psychological evaluation and diagnosed with occupational problems, malingering, and narcissistic personality disorder. You were determined to be fit for full duty and mentally responsible for your actions. On 29 November 2001, you were found guilty at a summary court-martial of disrespect towards a superior commissioned officer, malingering and disorderly conduct. You were sentenced to be confined for 30 days and to be reduced in rank to E-2 (suspended for six months). Based on your misconduct, on 30 November 2001, you were notified of your impending administrative separation due to a pattern of misconduct (POM) and commission of a serious offense (COSO). After waiving your rights, your commanding officer (CO) recommended to the separation authority (SA) that you be discharged with an OTH. On 9 December 2001, the SA approved your separation for POM. On 14 January 2002, you were so discharged.

You previously applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. On 28 August 2003, the NDRB denied your request after determining your discharge was proper as issued.

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 suffered from PTSD and previously requested an upgrade that was denied. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

Based on your assertion that you incurred a mental health condition during your military service, which might have mitigated the circumstances that led to your 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:

Petitioner was appropriately referred for psychological evaluation during your enlistment and properly evaluated during an inpatient hospitalization. Her diagnoses of Malingering and NPD (narcissistic personality disorder) were based on observed behaviors and performance during her period of service, the information she chose to disclose to the mental health clinician, and the psychological evaluation performed over close observation during a 1:1 watch. A personality disorder diagnosis is pre-existing to military service by definition, and indicated lifelong characterological traits unsuitable for military service. Unfortunately, she has provided no medical evidence in support of another mental

health condition. Her in-service misconduct appears to be consistent with her diagnosed personality disorder, rather than evidence of another mental health condition incurred in or exacerbated by military service. Additional records (e.g., post-service medical 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, "based on the available evidence, it is my considered clinical opinion that there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence her misconduct could be attributed to a mental health condition other than her diagnosed personality disorder."

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 SCM, 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 the many counselings and warnings you received before the command finally took disciplinary action against you. Finally, the Board concurred with the AO that there is insufficient evidence that your misconduct may 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,

8/23/2022

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Executive Director
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