



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: 2946-22
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 your application was not filed 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 29 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, 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 27 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.

During your enlistment processing you disclosed having possessed and/or using marijuana approximately five times and were granted an enlistment waiver. You enlisted in the Navy and began a period of active duty on 30 June 2004. On 19 May 2005, you received your first nonjudicial punishment (NJP) for violating Article 92 of the Uniform Code of Military Justice. On 9 June 2005, a court memorandum from your official military personnel file (OMPF) documents your suspended restriction, extra duty, and reduction in rank awarded at the aforementioned NJP was vacated.

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 1 July 2005, with a General (Under Honorable Conditions) (GEN) characterization of service, your narrative reason for separation is "Misconduct," your separation code is "JKQ," and your reenlistment code is "RE-4B."

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: (1) "I was discharged for alcohol consumption under age," (2) "I believe this correction should be made due to never receiving treatment for my alcohol addiction," (3) "Alcohol is considered a psychological problem," (4) "I was never offered treatment to be able to deal with this disorder," (5) "I was brand new to the Navy," (5) "Sadly, I was unaware of my rights and that I required treatment or some type of assistance," (6) "Lack of knowledge and minimal resources (were available)," (7) "I love the Navy, and I just want to correct this and if I do have benefits that would be a blessing." 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 MHC during military service, which might have contributed to the misconduct that led to your GEN, 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's record is incomplete and there is insufficient information regarding the charges for which she received NJP. Among available records, there is no evidence that she was diagnosed with a mental health condition during military service. Although she claims that she incurred an alcohol use disorder during military service, she has provided no evidence to support her contention. Her service record indicated a history of problematic substance use prior to enlistment. Substance use and problematic alcohol use are incompatible with military readiness and discipline. There is no evidence that she was unaware of her misconduct or not responsible for her behavior. Unfortunately, the records available for review at this time are not sufficiently detailed to establish clinical symptoms or a nexus with her misconduct. Additional records (e.g., 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 considered clinical opinion that there is insufficient evidence of a mental health condition that may be attributed to military service, and there is insufficient 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 NJP and documentation of the vacated NJP punishment, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and weighed it against the relative brevity of your active service. Further, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to a mental health condition. As a result, the Board concluded significant negative aspects of your service outweighed the positive aspects and continues to warrant a GEN 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,

9/12/2022

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Executive Director

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