



**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: 3407-22

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 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 Navy and entered active duty on 8 January 2003. Your pre-enlistment physical examination, on 28 September 2002, and self-reported medical history both noted no neurologic or psychiatric conditions or symptoms.

On 10 December 2003, a Navy Medical Officer (NMO) diagnosed you with a personality

disorder, not otherwise specified, with antisocial and borderline traits. The NMO deemed you unsuitable for continued military service.

On 18 December 2003, you received non-judicial punishment (NJP) for wrongfully appropriating an ATM card of another person and withdrawing ██████████ and unauthorized absence (UA). You did not appeal your NJP.

On 18 December 2003, your command notified you that were being processed for an administrative discharge by reason of misconduct due to the commission of a serious offense. You waived your rights to consult with counsel, submit a written statement to the Separation Authority, and to request an administrative separation board. In the interim, on 14 January 2004, you commenced a period of UA that terminated after forty-three (43) days, on 26 February 2004, with your surrender to military authorities. Ultimately, on 3 March 2004, you were discharged from the Navy for misconduct with an Other Than Honorable (OTH) discharge and assigned an RE-4 reentry code.

On 22 May 2018, the Naval Discharge Review Board (NDRB) denied you discharge upgrade relief. The NDRB determined that your discharge was proper as issued and no change was warranted.

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) you have been having hard times in life, (b) you need your discharge upgraded to general so you can receive benefit so you can live a better life, (c) you know you made some mistakes but you deserve your benefits that have been denied from you, (d) you are older and are a better person that wants a good life and a new start, (e) as of now you don't have any health insurance and having hardships in life, and (f) you are a great person and with the help of benefits you can buy a house and get your teeth fixed and maybe even do some volunteer work. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

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

During military service, Petitioner was diagnosed with a personality disorder. This 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. A personality disorder diagnosis is pre-existing to military service by definition, and indicates lifelong characterological traits unsuitable for military service. Unfortunately, she has provided no medical evidence to support her claims of PTSD or another mental health condition. Her in-service misconduct appears to be consistent with her

diagnosed personality disorder, rather than evidence of PTSD or another mental health condition incurred in or exacerbated by military service. 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 a diagnosis of PTSD that may be attributed to military service. 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 PTSD or another 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, 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 11 May 2022, to specifically provide additional documentary material. 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.

The Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average calculated from your available performance evaluations during your enlistment was 1.0 in conduct. Navy regulations in place at the time of your discharge required a minimum trait average of 2.5 in conduct (proper military behavior), for a fully honorable characterization of service. The Board concluded that your conduct marks during your active duty career were a direct result of your serious misconduct which further justified your OTH characterization of discharge.

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

