

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

> Docket No: 4055-22 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 October 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you 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 Navy and began a period of active duty on 10 July 1989. On 21 February 1990, you received non-judicial punishment (NJP) for wrongful possession of two military

identification cards, wrongfully eating food in the berthing area, engaging in a fight and using provoking language. On 27 March 1990, you were issued an administrative remarks (Page 13) counseling concerning deficiencies in your performance and conduct. You were advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative separation. On 7 April 1990, you were diagnosed with severe borderline personality disorder. On 16 May 1990, you received your second NJP for two specifications of failure to go to your appointed place of duty, disrespect toward a commissioned officer and noncommissioned officer and disobeying a general regulation. On 27 June 1990, you received your third NJP for failing to make restricted muster. On 9 July 1990, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to commission of a serious offense, misconduct due to pattern of misconduct, and convenience of the government due to the diagnosed personality disorder. You elected your procedural right to consult with military counsel and to present your case to an administrative discharge board (ADB). On 30 July 1990, an ADB was convened and determined that the preponderance of the evidence supported a finding of misconduct and recommended that you be separated from the Navy with an Other Than Honorable (OTH) characterization of service. The separation authority approved the recommendation for administrative discharge and directed your OTH discharge from the Navy. On 21 August 1990, you were discharged from the Navy with an OTH characterization of service by reason of misconduct due to pattern of misconduct.

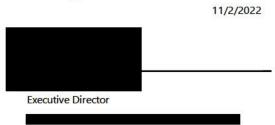
The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, your desire to upgrade your discharge character of service and contentions that that "prior to January 1990," your mental health was fine but after that time, the environment around you caused your mental health to decline. 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's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 22 August 2022. The AO noted in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during her enlistment. Her personality disorder 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. Post-service, she has submitted evidence of mental health diagnoses (depression and anxiety), which have been attributed to military service. Unfortunately, her personal statement and available records are not sufficiently detailed to establish a nexus with her misconduct, as she claims that her mental health concerns began after she incurred penalties for her misconduct. 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 AO concluded, "it is my considered clinical opinion there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is post-service evidence of other mental health conditions (depression and anxiety) that may be attributed to military service. There is insufficient evidence her misconduct could be attributed to PTSD or another mental health condition."

Based upon this review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your three NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded your misconduct showed a complete disregard for military authority and regulations. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command. Furthermore, the Board concurred with the AO and determined that while there is post-discharge evidence of other mental health conditions (depression and anxiety) that may be attributed to military service, there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service or that your misconduct could be attributed to PTSD or another mental health condition. As pointed out in the AO, your personal statement and available records are not sufficiently detailed to establish a nexus with your misconduct, as you claim that your mental health concerns began after you incurred penalties for your misconduct. As a result, the Board determined your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization. Even in light of the Wilkie Memo and reviewing the record holistically, 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 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,