



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

■  
Docket No: 5205-22  
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 24 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). Additionally, the Board reviewed an advisory opinion (AO) from a qualified mental health professional and your response to the AO.

During your enlistment processing you disclosed a previous use of marijuana. Although an enlistment waiver was not required, you were issued a drug abuse screening certificate cautioning that should you conceal alcohol or drug information and it is discovered after your enlistment, punitive action may be taken. You also signed a drug and alcohol statement of understanding.

You enlisted in the U.S. Navy and commenced a period of active duty on 5 July 1984. Upon your entry into active duty, you were briefed on the Navy's drug and alcohol abuse policy. In November 1986, you were diagnosed with complicated grief following the death of both your grandparents in October 1986. In March 1987, you were admitted for psychiatric evaluation at

Naval Hospital, █ and eventually diagnosed with adjustment disorder with depression mood, suicide ideation, and pregnancy. On 18 September 1987, you were found guilty at a special court-martial (SPCM) for a period of unauthorized absence totaling 78 days, missing ship's movement, and the wrongful use of cocaine and marijuana. You were sentenced to be confined, reduced in rank to E-1, and to be separated with a Bad Conduct Discharge (BCD). On 6 June 1988, you were so discharged.

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 and contentions that: (1) you incurred PTSD, anxiety, and depression during military service, (2) you experienced personal stressors to include verbal harassment, the death of your grandparents, and a lack of support, and (3) you disclosed marijuana use for depression during your recruitment process and were informed you would receive mental health treatment after you enlisted. The Board also noted your statement of remorse for your actions. For purposes of clemency and equity consideration, the Board noted you provided an advocacy letter but no supporting documentation describing post-service accomplishments.

Based on your assertion that you incurred PTSD, anxiety, and depression during 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:

During military service, she was diagnosed with a mental health condition. This diagnosis was determined upon close observation over an extended psychiatric hospitalization. There is no evidence of a diagnosis of PTSD, and she has provided no medical evidence in support of her claims. There is no evidence she was unaware of her misconduct or not responsible for her behavior. It is possible that her mental health concerns may have contributed to a decision of UA. Her current statement regarding pre-service marijuana use is not consistent with the service record, which makes it difficult to establish a nexus with her substance abuse. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific relationship 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 in-service evidence of another mental health condition (adjustment disorder) that may be attributed to military service. There is insufficient evidence all of her misconduct could be attributed to PTSD or another mental health concern."

In response to the AO, you provided official military personnel file (OMPF) and medical documents. In connection with the additional documents provided, the Board requested, and reviewed, a second AO. The second AO reviewed your service record as well as your petition, the matters, and the original and recent materials that you submitted and revised the original AO as follows:

Reviewed additional medical evidence. Petitioner provided evidence of treatment for Major Depressive Disorder, recurrent severe without psychotic features, Panic Disorder, and PTSD unspecified from 2019-2022. During sessions, the Petitioner ‘reported that she began having panic attacks, but was misdiagnosed, which led her to leave the Navy.’ While Petitioner has provided post-service evidence of mental health treatment and diagnosis, this is temporally remote to her military service. It is possible that the Adjustment Disorder symptoms experienced during military service have been reconceptualized as Major Depressive Disorder or Panic Disorder, given the passage of time and increased understanding. There is insufficient evidence of a diagnosis of PTSD that may have attributed to military service. While her UA may be attributed to mental health concerns, there is insufficient evidence her substance use may 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 SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included drug offenses. The Board determined that illegal drug use by a Sailor is contrary to Navy core values and policy, renders such Sailors unfit for duty, and poses an unnecessary risk to the safety of their fellow Sailors. The Board noted that marijuana use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. Further, after consideration of your rebuttal evidence, the Board concurred with the AO that there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service or that your substance use 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 a BCD characterization. While the Board appreciates your expression of remorse and understood the difficult circumstances you faced at the time, 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 an upgraded characterization of service as a matter of clemency or equity. 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,

█ 11/8/2022

Executive Director  
Signed by █