



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

██████████
Docket No. 6659-22
Ref: Signature Date

████████████████████
████████████████
████████████████████

Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 Board waived the statute of limitation 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 13 January 2023. 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 the 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) of a qualified mental health provider, which was previously provided to you. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

You enlisted in the Navy and underwent an enlistment physical, on 18 October 2001, in which you reported hospitalizations at age 12 for removal of your tonsils and at age 16 for removal of your appendix. In response to having been evaluated or treated for a mental condition, you responded "no." You received enlistment waivers for a pre-service arrest for driving under the influence in 1998, as well as for admitted pre-service use of the controlled substances "crack" and marijuana. Subsequently, you began a period of active duty on 20 November 2001.

Your record reflects periods of lost time from 19 February 2002 – 2 April 2002 and 13 April 2002 – 24 April 2002, with the second period of unauthorized absence (UA) being terminated with your apprehension by civil authorities and return to military control.

Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, 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, 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 in absentia from the Navy on 21 May 2002 with an Other Than Honorable (OTH) characterization of service, your narrative reason for separation is "Misconduct," your separation code is "HKD," and your reenlistment code is "RE-4." Your separation code indicates you were discharged for commission of a serious offense.

You previously applied to this Board for relief but were denied on 23 October 2020.

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. Although you did not make any specific contentions in your request for reconsideration, the Board considered your record with respect to the contentions you identified in your previous application. For purposes of clemency and equity consideration, the Board noted you provided preservice medical records but no supporting documentation describing post-service accomplishments or advocacy letters.

Because you also contend that your mental health status affected the circumstances of your discharge, the Board also considered the AO. The AO stated in pertinent part:

There is no evidence she was diagnosed with a mental health condition in military service, although there is evidence that she had mental health difficulties prior to military service that may have continued during military service. If her pre-service psychiatric hospitalization history had been disclosed, it is unlikely that she would have been accepted into military service. Her personal statement and available records are insufficient to establish a nexus with her misconduct, given her pre-service history of psychiatric difficulties and substance use. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to her misconduct) may aid in rendering an alternate opinion.

The AO concluded, "it is my considered clinical opinion there is evidence of a mental health condition that was experienced prior to military service and may have been present during military service. There is insufficient evidence her misconduct could be attributed to a mental health condition."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your UAs, 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. Additionally, the Board concurred with the AO that there is insufficient evidence your misconduct could be attributed to a mental health condition. Further, the Board agreed with the AO's assessment that all available evidence indicates that you intentionally withheld information which most likely would have disqualified you from enlisting.

As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. While the Board carefully considered the evidence you submitted in mitigation, 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 granting you the relief you requested or granting relief 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 the 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 is attached 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,

1/27/2023



Executive Director

