



remarks (Page 13) counseling informing you that you were being retained in the naval service, however, deficiencies in your performance and conduct were identified. 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 1 June 2000, you received your second NJP for three specifications of UA totaling 90 days. Subsequently, on 2 October 2000, you commenced a period of UA and were later declared a deserter.

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. Based on the information contained on your Certificate of Release or Discharge from Active Duty (DD Form 214), you were separated in absentia from the Navy, on 1 February 2001, with an "Under Other Than Honorable Conditions (OTH)" characterization of service, your narrative reason for separation is "Misconduct," your reenlistment code is "RE-4," and your separation code is "HKD," which corresponds to misconduct due to commission of a serious offense.

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 change your discharge character of service and contention that your command was aware of the "extreme situation" and you were told that there would be a different discharge. For purposes of clemency and equity consideration, the Board noted you provided documentation from the Department of Veterans Affairs (VA) but no supporting documentation describing post-service accomplishments or advocacy letters.

As part of the Board's review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 16 November 2022. The AO noted in pertinent part:

The Petitioner submitted VA disability rating letter which indicates that she was given 70% service connection for PTSD and Unspecified Depressive Disorder in December 2001. There are no supporting documents contained within the evidence submitted indicating the etiology or rationale for her service connected diagnosis. There is no evidence that she was diagnosed with a mental health condition in military service, or that she exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. She has provided no medical evidence in support of her claims. Unfortunately, her personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with her misconduct. Additional records (e.g., active duty medical records, 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 mental health condition that may be attributed to military service. There is insufficient evidence that her misconduct could be attributed to a mental health condition."

After thorough 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 and desertion, 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. The Board also considered the likely negative impact your conduct had on the good order and discipline of your command. Additionally, the Board concurred with the AO and determined that there is insufficient evidence of a mental health condition that may be attributed to military service, and there is insufficient evidence that your misconduct could be attributed to a mental health condition. As the AO noted, your personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with your misconduct. Furthermore, decisions reached by the VA to determine if former servicemembers rate certain VA benefits do not affect previous discharge decisions made by the Navy. The criteria used by the VA in determining whether a former servicemember is eligible for benefits are different than that used by the Navy when determining a member's discharge characterization. Finally, the Board noted that you did not provide evidence to substantiate your contentions. 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 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 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,

1/26/2023

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Executive Director

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