



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. 645-23
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 May 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 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 an advisory opinion (AO) furnished by qualified mental health provider. Although you were afforded an opportunity to submit an AO rebuttal for consideration, you chose not to do so.

You enlisted in the U.S. Navy and entered active duty on 6 December 2000. Your pre-enlistment physical examination, on 29 June 2000, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

On 24 September 2003, your command issued you a "Page 13" retention warning (Page 13) documenting certain deficiencies in your performance and conduct. Specifically, the Page 13 noted: (a) your suspected malingering over a period of twenty-two (22) month period of time,

(b) your failure to perform two consecutive physical readiness tests due to on/off light duty status and endless medical visits, and (c) your failure to remain below the Navy's maximum allowable weight for your height and your failure to perform mandatory physical training. The Page 13 expressly warned you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative separation. You did not submit a Page 13 rebuttal statement.

You received an adverse performance evaluation for the reporting period ending 29 February 2004. Your overall trait mark average was 2.43 (out of 5.0, and you received a 2.0 marks in "military bearing/character," "quality of work," "personal job accomplishment/initiative," and leadership."). You were rated as "significant problems" and not recommended for advancement. Specifically, the comments stated:

█ █ performance has degraded below standards and is not commensurate with what is expected from someone recommended for Third Class Petty Officer.

1. Received numerous letters of indebtedness from Navy Exchange and civilian institutions for drafting checks against an account with insufficient funds to honor drafts.
2. Received a Page 13 administrative warning/counseling from command's Flight Surgeon for malingering.
3. Failed to meet Navy's physical readiness standards during the fall 2003 PRT.

█ █ failed to live up to Navy core values of honor, courage and commitment. Her behavior was incompatible with the standards of conduct expected of Naval service members. Not recommended for advancement or retention.

On 6 July 2004, you were notified of administrative separation proceedings by reason of misconduct due to the commission of a serious offense (making a false official statement, larceny, and writing checks with insufficient funds). You were processed using "notification procedures," which meant that you were not entitled to request an administrative separation board to hear your case, but the least favorable discharge characterization you could receive was General (Under Honorable Conditions) (GEN). You elected to consult with counsel, submit a written statement for consideration, and to General Courts-Martial Convening Authority (GCMCA) review of your proposed separation.

In the interim, you received another adverse performance evaluation for the reporting period ending 15 July 2004. Your overall trait mark average was 2.50 (out of 5.0, and you received a 2.0 mark in "military bearing/character," "quality of work," and "personal job accomplishment/initiative"). You were rated as "significant problems" and not recommended for advancement. Specifically, the comments stated:

█ █ performance continued to be below standards.

1. Financial irresponsibility surfaced again with a letter of delinquency from Y-COMM and two letters of delinquency from Consumer Adjustment Corporation (\$876.54).
2. Verbally counseled by a Master Chief for Uniform Regulation Violation while standing watch.
3. Failed to report to PSD to discontinue BAH and BAS upon moving back into the barracks in February 2004, resulting in a debt to the US Government equal to four months BAH.

█ █ failed to live up to Navy core values of honor, courage and commitment. Her behavior was incompatible with the standards of conduct expected of Naval service members. Not recommended for advancement or retention.

On 1 September 2004, the GCMCA determined that the underlying basis for your separation was supported by a preponderance of the evidence. Ultimately, on 15 September 2004, you were discharged from the Navy for misconduct with a GEN characterization of service and assigned an RE-4 reentry code.

On 26 January 2012, the Naval Discharge Review Board (NDRB) denied your application to upgrade your discharge. The NDRB determined that your discharge was proper as issued and that no relief was warranted.

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 for a discharge upgrade and contentions that: (a) you were separated early under false pretenses so the Navy did not have to give you an Honorable discharge, (b) you never knowingly wrote bad checks, and (c) you feel you are owed your enlistment bonus. For purposes of clemency and equity consideration, the Board noted you did not provide 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 13 April 2023. The Ph.D. stated in pertinent part:

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. Throughout her disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. She has provided no medical evidence in support of her claims. Unfortunately, her personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus

with her misconduct. 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 Ph.D. concluded, "it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence to attribute her misconduct to PTSD or another mental health condition."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. 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 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 mental health-related conditions or 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 26 January 2023 to specifically provide additional documentary material. Additionally, even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board concluded that the severity of your misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that your misconduct was intentional and willful 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 denied your request to receive your enlistment bonus due to your administrative separation for misconduct prior to the end of your enlistment. The Board noted that in order for you to be eligible to receive your "Navy College Fund" bonus you were required to complete your entire contractual enlistment.

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 approximately 2.25 in conduct. Navy regulations in place at the time of your discharge recommended a minimum trait average of 2.50 in conduct (proper military behavior), for a fully Honorable characterization of service. The Board concluded that your cumulative misconduct was not minor in nature and that your conduct marks during your active duty career were a direct result of your serious misconduct and further justified your GEN characterization.

The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board

determined that characterization under GEN or under Other Than Honorable conditions (OTH) is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor. Moreover, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. As a result, the Board determined that there was no impropriety or inequity in your discharge, and even under the liberal consideration standard, the Board concluded that your misconduct and disregard for good order in discipline clearly merited your discharge. 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,

5/26/2023

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Executive Director

Signed by: █