



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

█
Docket No. 3158-23
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 statute of limitation was waived in accordance with the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel Readiness (Kurta Memo). A three-member panel of the Board, sitting in executive session, considered your application on 16 October 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). Additionally, the Board considered an advisory opinion (AO) from a qualified mental health professional and your response to the AO.

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 service on 13 July 1981. On 28 July 1982, you received your first nonjudicial punishment (NJP) for the wrongful use of provoking words to another service member. On 24 August 1982, you received a second NJP for a period of unauthorized absence (UA) which lasted three days. On 19 October 1983 and 11 March 1985,

respectively, you received two additional NJPs for the wrongful use of marijuana. Your record also reflects you were counseled multiple times for various infractions to include a nomination for advancement to E-4 withdrawal as a result of your continued misconduct. As a result, you were notified of your pending administrative processing due to drug abuse, at which time you waived your right to consult with counsel and to have your case heard before an administrative discharge board. On 3 April 1985, you were evaluated and diagnosed as psychological drug dependency and immature behavior. On 25 April 1985, you declined in-patient treatment at a █ hospital. Ultimately, you were discharged with an Other Than Honorable (OTH) characterization of service for drug abuse.

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 characterization of service, have your rank corrected to reflect ABH3/E-4, and to receive back-pay. You contend that you suffered from undiagnosed PTSD after being hit by a car at age five, which was exacerbated by mistreatment during military service and contributed to your misconduct. For purposes of clemency and equity consideration, the Board noted you provided a copy of your DD Form 214, newspaper articles, a Behavioral Health Professional Certificate, an American Red Cross Adult and Pediatric First Aid/VPR/AED Certificate of Completion, an American Red Cross First Aid Online (Eligible for Skills Session within 90 days) Certificate of Completion, a Managing Visibility, Time and Space Recognition of Course Completion Certificate from AAA, and statements.

Based on your assertions that you incurred PTSD and other mental health concerns during military service, which might have mitigated the circumstances of your separation, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO. The AO stated in pertinent part:

During military service, the Petitioner was diagnosed with a substance use disorder. There is no evidence that she was diagnosed with another mental health condition in military service, or that she exhibited any psychological symptoms or behavioral changes indicative of another diagnosable mental health condition. Post-service, she has received a diagnosis of PTSD that is temporally remote to military service and appears unrelated. Unfortunately, available records are 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 contribute to an alternate opinion.

The AO conclude, "it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute her misconduct to PTSD."

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 NJPs, 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 service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. 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. Additionally, the Board agreed with the AO that there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service and insufficient evidence to attribute your misconduct to PTSD. 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. While the Board carefully considered the evidence you submitted in mitigation, even in light of the Kurta, Hagel, and Wilkie Memos and reviewing the record liberally and 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. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. 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,

10/24/2023

