



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. 3526-23
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 11 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 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

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 duty on 19 May 1986. On 12 June 1987, you received non-judicial punishment (NJP) for two specifications of unauthorized absence (UA)

totaling two days. On 13 February 1989, you received an administrative remarks (Page 13) counseling concerning your failure to maintain physical readiness standards. On 15 February 1989, you received a second NJP for UA, a period totaling two days. On 16 February 1989, you received a Page 13 counseling concerning deficiencies in your performance and conduct. 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 10 March 1989, you received a third NJP for absence from your appointed place of duty. On 15 March 1989, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to pattern of misconduct as evidenced by your three NJPs during your current enlistment. On 29 March 1989, you were convicted by a summary court-martial (SCM) of eight specifications of absence from your appointed place of duty and failure to obey a lawful order.

On 10 April 1989, you elected your procedural right to consult with military counsel, and to present your case to an administrative discharge board (ADB). On 25 April 1989, an ADB convened, determined that the preponderance of the evidence supported a finding of misconduct by a majority vote, and recommended that you be separated from the Navy with an Other Than Honorable (OTH) characterization of service. On 15 June 1989, you received a fourth NJP for absence from your appointed place of duty.

Subsequently, your commanding officer (CO) forwarded your administrative separation package to the separation authority (SA) recommending your administrative discharge from the Navy with an OTH characterization of service. The SA approved the recommendation for administrative discharge, and directed your OTH discharge from the Navy by reason of misconduct due to pattern of misconduct. On 22 August 1989, 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 change your discharge character of service and contentions that there are charges within your record that do not accurately reflect what happened, facts were left out, you enjoyed being in the Navy and serving your country in whatever capacity, and you desired to serve four more years but that was taken from you. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 5 September 2023. The AO noted 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 his 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 AO concluded, "it is my clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute her misconduct 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 four NJPs and SCM conviction, 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. Further, the Board concurred with the AO that there is insufficient evidence of a mental health condition that may be attributed to military service, and there is insufficient evidence to attribute her misconduct to a mental health condition. As the AO explained, your personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with your misconduct. There is no evidence that you were diagnosed with a mental health condition in military service, or that you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Furthermore, the Board determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should otherwise not be held accountable for your actions. Finally, the Board noted that you were provided multiple opportunities to correct your deficiencies during your service; however, you continued to commit additional misconduct. 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. 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. 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,

10/26/2023

