



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

█  
Docket No. 3811-23  
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 25 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, 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)/mental health condition (MHC) (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). In addition, the Board considered an advisory opinion (AO) from a qualified mental health professional. Although you were provided an opportunity to respond to the AO, 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 U.S. Marine Corps and entered active duty on 11 January 2006. Upon entry onto active duty, you admitted to illegal use of a controlled substance while in the Delayed Entry Program but a waiver was not required.

From 7 May 2006 until 5 June 2006, you were in an unauthorized absence (UA) status from your command. Upon your return, you made a voluntary statement that you used marijuana while you were UA. You received non-judicial punishment (NJP), on 10 July 2006, for 29 days UA. You were subsequently issued a counseling warning to refrain from further UCMJ violations. Then, on 24 July 2006, you received your second NJP for being disrespectful toward a sergeant. You received your third NJP, on 10 August 2006, for failing to report your psychiatric history and polysubstance abuse. As a result, the Commanding Officer (CO) made his recommendation to the Separation Authority (SA) that you be discharged and be assigned an Other Than Honorable (OTH) characterization for drug abuse. The SA accepted the recommendation and directed you be discharged. You were so discharged on 18 September 2006.

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 you had an undiagnosed mental health issues that prevented you from completing your contract, you had bad residual pain from hurting yourself while in boot camp that exacerbated your mental health decline, and you do not believe your mental health was taken into consideration. For purposes of clemency and equity consideration, the Board noted you provided medical documentation but no supporting 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 15 September 2023. The Ph.D. stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated on more than one occasion during her enlistment. Her personality and substance use disorder diagnoses were based on observed behaviors and performance during her period of service, the information she chose to disclose, and the psychological evaluations performed. Post-service, she has received a diagnosis of bipolar disorder that is temporally remote to military service. Her in-service misconduct appears to be consistent with her diagnosed personality and substance use disorder diagnoses, rather than evidence of PTSD or another mental health condition incurred in or exacerbated by military service. Furthermore, if she had fully disclosed her substance use history prior to enlistment, it is unlikely she would have entered service. 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 a mental health condition, other than her pre-service substance use and personality disorder diagnoses.”

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 and admission of marijuana use, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it was a drug offense. 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. Further, the Board concurred with the AO and determined there is insufficient evidence to attribute your misconduct to a mental health condition. As explained in the AO, your in-service misconduct appears to be consistent with your diagnosed personality and substance use disorder diagnoses, rather than evidence of PTSD or another mental health condition incurred in or exacerbated by military service. Finally, the Board concluded that your discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service, which was terminated by your separation with an OTH. 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 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 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,

10/31/2023

█

Executive Director

Signed by: █