



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

██████████
Docket No. 7057-23

Ref: Signature Date

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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 Board waived the statute of limitation 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 28 February 2024. 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 to 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) of a qualified mental health provider. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

You enlisted in the Marine Corps in March 2006 under a reserve option contract after obtaining a distance waiver due to residing a distance of 178 miles from the reserve training center. You completed your initial period of required active service from 17 April 2006 through 15 July 2006 with uncharacterized active duty service, at which time you were discharged into the Marine Corps Selected Reserve to join a drilling unit. On 19 July 2006, you joined a reserve detachment for duty in ██████████; however, you were administratively counseled in November of 2006 for having missed required drill periods in September and October. On 27 November 2006, the command's legal chief attempted to reach you through your recall contact information. He initially left a message and, on the second attempt at calling, spoke with a person who identified herself as your grandmother. He informed her that the command needed to provide

you with notification of a potential administrative separation package and confirmed with her the accuracy of your contact information.

Following this call, your commanding officer issued a naval letter notifying you of your unsatisfactory performance due to 11 missed drills across the months of September and October 2006. The letter cautioned you of the seriousness of your situation and your potential discharge from the Marine Corps Reserve with possible characterization of service of under Other Than Honorable (OTH) conditions, in addition to other collateral consequences. You were advised to contact your command to discuss options to correct your deficiencies and, to assist your command in determining the most appropriate course of action, you were also encouraged to make a statement on your behalf regarding any hardship or medical problems which may have precluded your attendances at scheduled drills.

You were contacted again in January 2007 regarding continued missed drills. Although a message was left regarding the situation, neither you nor your next of kin answered any of the multiple calls which were made in an attempt to contact you via the two different telephone numbers you had provided. Administrative counseling entries were made in your service record to document your missed drills for the months of January and February 2007. Consequently, you were notified, on 5 March 2007, of administrative discharge proceedings due to unsatisfactory participation in the ready reserve due to your unauthorized absences and at least 11 missed drill periods. On 12 March 2006, you signed and returned your acknowledgment of administrative separation and waived your right to consult legal counsel or to request a hearing before an administrative separation board. The recommendation for your discharge under OTH conditions was forwarded and, following legal review, approved on 2 July 2007 with the directive that you be discharged within 20 days.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade and change to your narrative reason for separation. On 25 June 2010, the NDRB denied your request after determining your discharge was proper as issued.

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 discharge and your contentions that you suffered from anxiety and depression following your discharge from active duty into the Selected Reserve duty to severe emotional and physical abuse by your former fiancé, this made it nearly impossible to attend drill away from your primary residence due to your fear of the repercussions it would have on your relationship, you had no close family members to help you and received no guidance from your reserve unit, you regret how you handed the situation and wish you could go back and change it, you have sought professional mental health at some point, you no longer have your records of mental health care, and the provider whom you saw is no longer in business. For purposes of clemency and equity consideration, the Board noted you submitted your official military personnel file but no supporting documents of post-discharge character or accomplishments.

Because you contend that a mental health condition affected the circumstances of your discharge, the Board considered the AO. The AO 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. 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.

As a result, the AO concluded, “there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute [your] misconduct to a mental health condition.”

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 missed drills, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Further, the Board concurred with the conclusion of the AO regarding your mental health contentions and the overall inadequacy of supporting evidence. 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 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,

3/14/2024

