



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. 7508-23
Ref: Signature Date

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Dear █

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 9 November 2023. The names and votes of the members of the panel 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 and 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo).

A review of your record shows that you enlisted in the Navy and served an initial period of Honorable service from 8 June 1993 to 7 February 1999. You reenlisted on 23 August 1999, and changed your rating from Storekeeper to Cryptologic Technician. On 18 March 2004, you received nonjudicial punishment for four instances of unauthorized absence and insubordinate conduct toward a warrant officer. On 3 May 2004, you were notified of the initiation of administrative separation processing and your rights in connection therewith. You waived your right to an administrative board and you were discharged on 18 June 2004 with a General (Under Honorable Conditions) (GEN) characterization of service. On 23 June 2004, your commanding officer transmitted your administrative discharge package to his superior in which he explained that he did not support your request for an Honorable discharge as follows:

In an effort to assist [Petitioner] find a way to correct her deficiencies and become an asset to this command, I awarded an oral reprimand [at nonjudicial punishment].

I also made it extremely clear that the command would be standing ready to assist her in any way to help her overcome this mast and that any further incidents on her behalf would be a violation of the page 13 issued subsequent to the mast proceedings. On 19 April 2004, [Petitioner] was again insubordinate to her supervising Petty Officer. This incident . . . was particularly aggravated in that it occurred within sight and hearing of several other sailors, resulting in significant mission disruption.

In 2004, you filed an application with the Naval Discharge Review Board (NDRB) seeking an upgrade to your discharge. On 21 April 2005, the NDRB found your discharge was proper but recommended that you be issued a DD Form 215 noting the periods of your Honorable service.

In your petition, you request that your narrative reason for discharge be changed to permanent disability – retired, that your discharge characterization be upgraded to Honorable, that your separation program designator be changed to conform to 271 (permanently retired by reason of physical disability), that you be entitled to disability severance pay, that you be advanced to paygrade E-5, that you be paid back pay in the amount of \$500,000, and that you receive monthly retired pay \$4,000 per month. In support of your requests you contend that the *Manker v. Del Toro* settlement applies directly to Person Gulf War veterans and you are entitled to Gulf War Veterans Preference. You also assert that you had your identity stolen and you provided documentation that you had a security clearance while you were on active duty.

The Board carefully reviewed all of your contentions and the material that you submitted in support of your petition, and the Board disagreed with your rationale for relief. In keeping with the letter and spirit of the Kurta Memo, 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. In reaching its decision, the Board observed that, in order to qualify for military disability benefits through the Disability Evaluation System with a finding of unfitness, a service member must be unable to perform the duties of their office, grade, rank or rating as a result of a qualifying disability condition. Alternatively, a member may be found unfit if their disability represents a decided medical risk to the health or the member or to the welfare or safety of other members; the member's disability imposes unreasonable requirements on the military to maintain or protect the member; or the member possesses two or more disability conditions which have an overall effect of causing unfitness even though, standing alone, are not separately unfitting.

In reviewing your record, the Board concluded the preponderance of the evidence does not support a finding that you met the criteria for unfitness as defined within the disability evaluation system at the time of your discharge. There is no documentation in your available records that you were considered unfit within the meaning of the disability evaluation system at any time during your service. The Board similarly did not observe any indication from your chain of command that you were considered unable to perform any of your duties as a result of any qualifying disability condition. To the contrary, your commanding officer's transmittal letter of your administrative separation package mentions only your misconduct and the command's efforts to provide you assistance in overcoming and succeeding despite the disciplinary action that was taken against you. In addition, your petition did not include any argument or

documentation that tended to support that you were unfit during service. In sum, the Board observed no evidence that you had any unfitting condition while on active duty. In light of the foregoing standard applicable to the Disability Evaluation System, the Board did not discern any facts that would support you being eligible for a disability retirement. In fact, even with the application of liberal consideration, and an assumption that you suffered a mental health condition while you were on active duty, there is no evidence such mental health condition impacted your fitness to serve. Rather, the evidence of record demonstrates that you were discharged as a result of committing misconduct. Thus, the Board denied the relief you requested that relates to the Disability Evaluation System (e.g., that your discharge be changed to permanent disability – retired, that your separation program designator be changed to conform to 271 (permanently retired by reason of physical disability), that you receive back pay, and that you receive monthly retired pay).

In addition, the Board found no basis to grant your request to be advanced to paygrade E-5 or that your discharge characterization be upgraded to Honorable. The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case. These included, but were not limited to, your desire for a discharge upgrade and your previously discussed contentions. 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 NJP, 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 considered the efforts by your command to rehabilitate your conduct but noted you continued to commit misconduct. As a result, the Board concluded significant negative aspects of your service outweighed the positive aspects and continues to warrant a GEN characterization. While the Board carefully considered the evidence you submitted in mitigation, even in light of the Kurta 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.

With respect to your assertion Gulf War Veterans' preference and your honorable Gulf War Service, please note that these are not matters generally within the purview of this Board. The Board noted, however, that the Department of Veterans' Affairs, www.va.gov, may be in a position to assist in this regard.

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,

11/24/2023

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Executive Director

Signed by: █