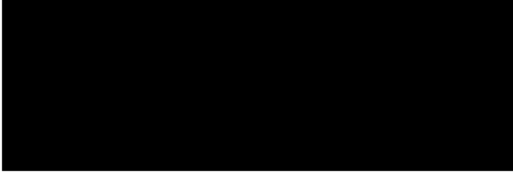




DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

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Docket No. 6410-23
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 and Readiness (Kurta Memo). A three-member panel of the Board, sitting in executive session, considered your application on 22 March 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, 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional, dated 6 February 2024. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You enlisted in the Navy and began a period of active duty on 23 June 2003. On 16 October 2003, you received nonjudicial punishment (NJP) for failure to obey a lawful order by physically engaging in aggressive physical contact with another recruit. On the same date, you were counseled concerning your NJP violation and advised that failure to take corrective action could result in administrative separation. On 11 March 2004, you received a second NJP for being disrespectful in deportment towards a noncommissioned officer. On 23 April 2004, you received a third NJP for failure to obey a lawful order. On 10 June 2004, you were notified of the

initiation of administrative separation proceedings by reason of misconduct due to pattern of misconduct and commission of a serious offense. Subsequently, you decided to waive your procedural rights. On 28 June 2004, your commanding officer recommended a General (Under Honorable Conditions) discharge characterization of service. On 30 June 2004, the separation authority approved and ordered a GEN discharge characterization by reason of misconduct due to pattern of misconduct. On 27 July 2004, 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 for a discharge upgrade and contentions that: (a) you were discharged following a series of events that were related to a mental health issues, (b) these undiagnosed conditions greatly affected your judgment, behavior, and interactions with others, (c) you take full responsibility for your actions, and you firmly believe that a proper evaluation of your mental health at that time would have provided a clearer understanding of the underlying issues that contributed to your misconduct, and (d) you have actively engaged in therapy, treatment, and rehabilitation to manage these conditions and address the behavioral issues that were present at the time of your discharge. For purposes of clemency and equity consideration, the Board noted you submitted a copy of your medical diagnosis dated 4 May 2021.

As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

There is no evidence that the Petitioner 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. Post-service, she has received mental health diagnoses that are temporally remote to military service and appear unrelated. 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 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 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 likely negative impact it had on the good order and discipline of your unit. The Board noted that you were given multiple opportunities to correct your conduct deficiencies but continued to commit misconduct. Lastly, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to a mental health condition. As explained in the AO, your post-service mental health diagnoses are temporally remote to military service and appear unrelated. Further, your personal statement is

not sufficiently detailed to establish clinical symptoms in service or provide a nexus with your misconduct.

As a result, the Board concluded significant negative aspects of your service outweigh 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, 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 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,

4/8/2024

