



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. 8175-23
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session on 22 April 2024, has carefully examined your current request. 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 service record, and applicable statutes, regulations, and policies, to include the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (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 an advisory opinion (AO) from a qualified mental health professional and your response to the AO.

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 previously submitted an application to this Board and were denied relief on 21 April 2010.

The Board carefully considered all potentially mitigating and/or extenuating 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: (a) your desire to upgrade your characterization of service, (b) your assertion that you were struggling with undiagnosed mental health conditions during your service, and (c) the impact that your mental health had on your conduct. For purposes of clemency consideration, the Board noted you provided evidence of your post-service accomplishments and character letters.

In your current request for relief, you contend that you were suffering from undiagnosed mental health concerns during military service, which contributed to your misconduct. You assert that you suffer from Attention Deficit Hyperactivity Disorder (ADHD), which made it difficult to serve in the military while handling the stress of single motherhood. In support of your request, you provided evidence of treatment for “Adjustment Disorder with Anxiety, Atypical Depressive Disorder, or Dysthymic Disorder,” from June 2006 to March 2007. You also provided documentation from a civilian mental health provider noting treatment from December 2021 to May 2022 for “Attention Deficit Hyperactivity Disorder, combined type (ADHD).” 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 21 March 2024. The Ph.D. noted in pertinent part:

Petitioner was appropriately referred for psychological evaluation during military service and received no mental health diagnosis. Temporally remote to her military service, she has received a diagnosis of ADHD. ADHD typically represents lifelong difficulties with concentration and behavioral control, and as such, the Petitioner may have been experiencing undiagnosed symptoms during military service. However, there is insufficient evidence to attribute her misconduct to undiagnosed ADHD, as it is difficult to attribute her behavior to impaired concentration. During military service, the Petitioner claimed she was experiencing depression. However, her service record indicates that she received no mental health diagnosis upon evaluation. A few years after her separation from service, she received treatment for mental health concerns that appear to be related to stressors she was experiencing at the time of treatment, rather than her previous military experiences. As such, there is insufficient evidence to attribute her in-service misconduct to irritability or apathy associated with a depressive disorder. Unfortunately, available records are not sufficiently detailed to establish significant clinical symptoms in service or provide a nexus with her misconduct. It is difficult to attribute repeated misuse of government equipment to a mental health condition, and the Petitioner denied substance use in 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 mental health condition that may be attributed to military service. There is insufficient evidence to attribute her misconduct to a mental health condition.”

You responded to the AO by providing photos of prescriptions and evidence of mental capacity testing that assessed your cognitive abilities, as well as your social and emotional concerns. The Ph.D. reviewed your rebuttal evidence, to include evidence of prescription for medications typically prescribed for mental health concerns and the mental health evaluation describing mild learning impairments. After review of this evidence, the original AO remained unchanged.

After thorough review, the Board concluded the potentially mitigating factors were insufficient to warrant relief. In accordance with the Kurta, Hagel, and Wilkie Memos, the Board gave liberal and special consideration to your record of service, and your contentions about undiagnosed mental health issues and the possible adverse impact on your service. Specifically, the Board felt that your misconduct, as evidenced by your two NJPs and counseling warnings, outweighed these mitigating factors. The Board considered the seriousness of your repeated misconduct and the likely negative impact that your conduct had on the good order and discipline of your command. The Board determined that illegal drug use is contrary to Marine Corps values and policy and poses a risk to the safety of fellow service members.

In making this determination, the Board concurred with the AO that there was no convincing evidence that you suffered from any type of mental health condition while on active duty, or that any such mental health condition was related to or mitigated the misconduct that formed the basis of your discharge. The Board noted that you did not report that you were suffering from any mental or physical conditions that would have triggered referral for treatment. The Board agreed with the AO that your post-service diagnosis is temporally remote to your service and fails to draw a sufficient nexus to your underlying misconduct. As a result, the Board concluded that your misconduct was not due to mental health-related symptoms. The Board found that your active duty misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also 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. The Board concluded that your conduct constituted a significant departure from that expected of a Marine and continues to warrant an OTH characterization.

As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an Other Than Honorable characterization. While the Board carefully considered the evidence you submitted in mitigation and commends you for your post-discharge accomplishments, 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, _____
4/30/2024

