



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. 225-24
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.

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 August 2024. 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, 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 the 24 May 2024 Advisory Opinion (AO) provided to the Board by a Licensed Clinical Psychologist. Although you were provided an opportunity to respond to the AO, you chose not to do so.

A review of your record shows that you entered the Navy and began initial active duty training on 12 August 1997. On 6 February 1998, your Commanding Officer (CO) notified you of administrative separation by reason of misconduct due to commission of a serious offense, due to violating Article 121 of the Uniform Code of Military Justice (UCMJ), larceny of your roommate's Automatic Teller Machine (ATM) card and U.S. currency of a value of \$350. You waived your right to an administrative separation board and were recommended for an Other Than Honorable (OTH) characterization of service. On 25 March 1998, 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 you deserve a medical discharge. You contend while in service you were in an abusive relationship and your partner coerced you to steal from your roommate. You further argue, because of this relationship, you developed major depression and anxiety. In support of your application, you submitted an 8 August 2018 letter from your medical provider stating that your medical conditions, to include osteoarthritis, fibromyalgia, and diabetes, resulted in your inability to maintain employment. For the purposes of clemency and equity consideration, the Board noted you did not provide documentation describing post-service accomplishments or advocacy letters.

Based on your assertions that you incurred a MHC during your military service, which might have mitigated your discharge character of service, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an 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. Her provided medical evidence is temporally remote to her military service and appears unrelated...available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with her misconduct, particularly as theft is not a typical symptom of a mental health concern.

The AO 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 the circumstances of her separation 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 administrative separation for larceny, 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 AO that there is insufficient evidence to attribute the circumstances of your separation to a mental health condition. As explained in the AO, theft is not a typical symptom of a mental health concern and the medical evidence you provided is temporally remote to your military service and appears unrelated. 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.

Regarding your request for a disability discharge, the Board again concurred with the AO that you provided no evidence to support an in-service mental health diagnosis. Moreover, even if there was evidence of an unfitting disability condition, the Board determined you were ineligible for disability processing since service regulations directed misconduct processing to supersede disability processing.

Therefore, 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. 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,

9/26/2024

