



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

█
Docket No. 3765-24

Ref: Signature Date

█
█
█

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 4 October 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 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, 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). Additionally, the Board also considered an advisory opinion (AO) furnished by qualified mental health provider. Although you were provided an opportunity to respond to the AO, you chose not to do so.

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 originally enlisted in the U.S. Navy on 18 November 1999 but, on 20 April 2000, you were administratively separated from the Delayed Entry Program with an uncharacterized entry level

separation due to a medical disqualification. Subsequently, you re-enlisted in the U.S. Navy and began a period of active duty service on 6 September 2000. Your pre-enlistment physical examination, on 18 November 1999, and self-reported medical history both noted no psychiatric or neurologic issues, history, conditions, or symptoms. On 13 April 2001, you reported for duty on board the ██████████ in ██████████, ██████████.

On 10 July 2002, you received non-judicial punishment (NJP) for an assault. You did not appeal your NJP. On the same day, your command issued you a "Page 13" retention/counseling warning (Page 13) documenting your NJP for assault. The Page 13 advised you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative separation. You did not elect to submit a Page 13 rebuttal statement.

On 2 October 2002, you received non-judicial punishment (NJP) for two (2) separate specifications of unauthorized absence (UA), and making a false official statement when you forged a signature on your leave paperwork. You did not appeal your NJP. On 5 December 2002, you received NJP for UA. You did not appeal your NJP.

On 9 December 2002, you received NJP for UA. You did not appeal your NJP. On 27 December 2002, you received NJP for another UA. You did not appeal your NJP.

Consequently, your command notified you of administrative separation proceedings by reason of misconduct due to a pattern of misconduct and commission of a serious offense. You waived your rights to consult with counsel and to request a hearing before an administrative separation board. Ultimately, on 25 April 2003, you were separated from the Navy for misconduct with an under Other Than Honorable conditions (OTH) discharge characterization and were assigned an RE-4 reentry code.

On 11 August 2005, the Naval Discharge Review Board (NDRB) denied your initial discharge upgrade application. On 8 January 2019, the NDRB initially granted you an upgrade to a General (Under Honorable Conditions) (GEN) characterization of service. However, on 9 April 2019, the NDRB Secretarial Review Authority (SRA) set aside the proposed discharge upgrade and determined your discharge characterization would remain as an OTH.

On 8 July 2022, this Board denied your discharge upgrade petition. The AO provided for your petition, dated 1 July 2022, concluded that there was insufficient evidence your in-service misconduct could be attributed to a mental health condition or military sexual trauma.

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 suffered mentally before you even understood what you were suffering from, (b) you were diagnosed early on while in the shipyard in ██████████ as being bipolar with depression and anxiety brought on by the stresses of your command, (c) you did not have much understanding of what you were dealing with outside of your needing medication that led you to make a lot of impulsive decisions that ultimately resulted in your discharge, (d) since then

you have had your fair share of victories and struggles as you tried to navigate life without medication or therapy, (e) you are now in the process of moving forward after experiencing homelessness in part due to your mental illness, (f) you have taken several months of classes and counseling to help with your mental stability as well as gotten a good understanding of how your illness affects you and what medications work best for you, (g) you are now in recovery and heading towards reentry into the world with routine follow up care, (h) you were awarded a GEN but the SRA denied your upgrade, (i) you were affected by a medical mental condition that manifested during your time in service, (j) you were under other than normal conditions with the changes you underwent in a short period of time and having your rank removed from you as an initial consequence and lack of representation during time of despair, (k) you made a lot of good contributions to your department while in service, (l) you were treated unfairly and lacked representation, and (m) you acted out of stress and an unclear mindset. For purposes of clemency and equity consideration, the Board considered the totality of the evidence you provided in support of your application.

A licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records and issued an AO dated 16 August 2024. As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

Petitioner provided evidence of a diagnosis of Bipolar II Disorder, with an onset date listed to be February 2024...There is evidence from the Petitioner's testimony that she was diagnosed with a mental health condition in military service. The available medical evidence to support her claim is temporally remote to her military service. Unfortunately, available records do not provide a nexus with her misconduct, particularly given inconsistent statements regarding the onset of her mental health symptoms and her preservice behavior.

The Ph.D. concluded, "it is my clinical opinion there is some post-service evidence from the Petitioner 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."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. In accordance with the Hagel, Kurta, and Wilkie Memos, 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. However, the Board concluded that there was no convincing evidence of any nexus between any mental health conditions and/or related symptoms and your misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to mental health-related conditions or symptoms. Even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your cumulative misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that your 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 not be held accountable for your actions.

The Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average calculated from your available performance evaluations during your enlistment was approximately 1.50 (out of a possible 5.0) in conduct. Navy regulations in place at the time of your discharge recommended a minimum trait average of 2.50 in conduct (proper military behavior), for a fully Honorable characterization of service. The Board concluded that your cumulative misconduct was not minor in nature and that your conduct marks during your active duty career were a direct result of your serious misconduct and a repeated failure to conform to basic military standards of good order and discipline, all of which further justified your OTH characterization.

The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor.

As a result, the Board determined that there was no impropriety or inequity in your discharge and concluded that your misconduct and disregard for good order in discipline clearly merited your discharge. 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 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,

10/25/2024

