



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. 4023-24
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 7 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 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, 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional. Although you were afforded an opportunity to submit an AO rebuttal, 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 enlisted in the Navy and began a period of active duty on 20 June 1994. During your service you received two non-judicial punishments (NJPs), on 9 February 1995 and 24 July 1997, for unspecified offenses.

Based on the information contained on your Certificate of Release or Discharge from Active Duty (DD Form 214), it appears that you submitted a voluntary written request for an Other Than Honorable (OTH) discharge for separation in lieu of trial (SILT) by court-martial. In the absence of evidence to contrary, it is presumed that prior to submitting this voluntary discharge request, you would have conferred with a qualified military lawyer, been advised of your rights, and warned of the probable adverse consequences of accepting such a discharge. As part of this discharge request, you would have acknowledged that your characterization of service upon discharge would be an OTH.

Unfortunately, the documents related to your administrative separation are not in your official military personnel file. In this regard, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Your DD Form 214, reveals that you were separated from the Navy on 20 August 1997 with an OTH characterization of service, your narrative reason for separation is "In Lieu of Trial by Court Martial," your separation code is "KFS," and your reenlistment code is "RE-4." At the time of your discharge, you had approximately 10 months remaining on your enlistment contract.

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 to upgrade your discharge and contentions that: (1) you incurred domestic violence during military service which contributed to the circumstances of your separation, (2) your son's father used his influence to falsify the results of your positive urinalysis for marijuana, (3) you were pressured into signing a false confession of adultery so that you could be released from service and return to caring for your children, (4) you were never represented by counsel, (5) you were unfairly treated and targeted by individuals in higher positions within your command, (6) you were placed under restriction and even forced to sleep in a copy room, (7) despite these circumstances, you served honorably and proudly, as reflected in your evaluations and reviews, (8) aside from a minor issue where you overslept and were late for work, you had no significant disciplinary problems throughout your service, and (9) you respectfully request a change in your character of service and urge the Board to review your records and evaluations to see that you served with honor and dedication. For purposes of clemency and equity consideration, the Board considered the documentation you provided in support of your application.

As part of the Board's review, a qualified mental health professional reviewed your contentions and the available records and provided the Board with an AO on 20 August 2024. The AO stated in pertinent part:

There is no evidence that she was diagnosed with a mental health condition in military service. Temporally remote to her military service, she has received mental health treatment for adjustment difficulties to contemporary stressors that appear unrelated to her military service. While it is plausible that domestic violence may have contributed to mental health concerns in service, it is difficult to attribute her misconduct to a mental health concern, given her denial of having engaged in the behavior and statement that she was falsely accused of 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 post-service evidence from the Petitioner of mental health concerns that may be attributed to military service. There is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute her misconduct to PTSD or another mental health condition."

After a 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 and SILT discharge, 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, based on your statement, the Board noted that your misconduct included a drug offense. The Board determined that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. The Board noted that marijuana use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military.

Additionally, the Board concurred with the AO that there is insufficient evidence of a diagnosis of PTSD that may be attributed to your military service, and insufficient evidence to attribute your misconduct to PTSD or another mental health condition. As explained in the AO, you have received mental health treatment for adjustment difficulties to contemporary stressors that are temporally remote to your military service and appears unrelated. Therefore, the Board 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.

Regarding your contention that you were not represented by legal counsel, the Board relied upon the presumption of regularity that you were properly advised by qualified counsel prior to submitting your SILT request. Based on this, the Board concluded that your discharge was both proper and equitable under the applicable standards of law and discipline, and that the discharge accurately reflects your conduct during your period of service, which resulted in an Other Than Honorable (OTH) discharge. The Board determined the evidence you provided was insufficient to overcome the presumption of regularity in your case.

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. While the Board carefully considered the evidence you submitted in mitigation and commends you on 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,

10/31/2024

