



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

██████████
Docket No. 4076-24
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 24 May 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 to the Kurta 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 determined that your personal appearance, with or without counsel, would not materially add to the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

At the time you enlisted in the Navy, you had recently divorced and had a minor child. You were administratively counseled and were advised you had to effect transfer of legal custody of your child prior to authorization of your enlistment. A subsequent administrative counseling statement documented that custody of your dependent child had been transferred to your ex-husband pursuant to a court order of competent jurisdiction, and you began a period of active duty on 15 August 1988. Your Record of Emergency Data likewise indicated that your ex-husband was custodian of your dependent child.

In January 1989, you transferred to a permanent duty station in ██████████ where, at some point, you regained custody of your dependent child.

Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, 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 Certificate of Discharge or Release from Active Duty (DD Form 214) indicates that you were discharged on 4 August 1989, under the authority of Naval Military Personnel Manual (MILPERSMAN), paragraph 3620200, reflecting a general basis of convenience of the government, with a narrative reason for separation of “Demonstrated Dependency,” consistent with your separation code of “KDH” and “RE-3H” reentry code.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to, your desire to change your narrative reason for separation to “Hardship” and your contentions that, at some point in time – presumably after you declared that your ex-husband had court ordered custody of your dependent child concurrent with your entry to military service – you experienced hardship when your ex-husband took your son “into hiding, retained a lawyer and received custody back and [your] son was found.” The Board interpreted this statement as indicating that your ex-husband violated the terms of your previously referenced court ordered custody agreement in some capacity, a result of which you retained legal counsel regarding the custody situation, and ultimately received custody under a subsequent court order. The Board noted, however, that you did not submit any supporting documentation as evidence of this purported chain of events or of the court records regarding custody actions. Additionally, despite of your affirmation at the time of your enlistment that you did not have custody of your dependent child, the Board observed that your application states you were “planning to get custody back of [your] son” after you settled into your permanent duty station and advanced to the paygrade of at least E-3, which the Board therefore concluded had been your intention from the outset at the time of your enlistment.

With respect to your claim of hardship, you further contend that you were living off-base with three female sailors and working a second job, but that you were unable to afford living expenses for yourself and your dependent child. You also argue that you were unable to obtain an assignment closer to your home of record. The Board noted that, at the time of your discharge, a narrative reason of “Hardship” could have been issued under the same overarching MILPERSMAN authority as your “Demonstrated Dependency” narrative reason; however, “Hardship” would have been identified by a separation code of “KDB” as opposed to “KDH.”

In this regard, your service records contain no documentation that you applied for a hardship transfer or discharge. The Board desired to clarify, for your edification in the event that you seek reconsideration with supporting documentation, that a discharge for the specific reason of “hardship,” as opposed to dependency or parenthood, would normally have been accompanied by a request from the service member with a specific review process to confirm that the nature of the service member’s circumstances constitute “genuine undue hardship” beyond that normally encountered and resolved by other service members, that the circumstances are not temporary,

and that the member's family is not otherwise capable of providing assistance. Although service regulations recognize that a hardship situation might arise due to custody situations following divorce when the member has sole custody of a minor child, the Board found that you submitted no evidence demonstrating that your circumstances met this higher criteria. Therefore, the Board applied a presumption of regularity that you were notified of processing for involuntary administrative separation for the primary reason identified in your DD Form 214 and advised of your rights incident to that processing, to include being afforded the opportunity to consult free military legal counsel. Absent evidence to the contrary, the Board concluded that you did not seek a hardship discharge and, instead, accepted your discharge for the reason of demonstrated dependency.

You further identify in your contentions that you applied for, but were denied, receipt of health care from the Department of Veterans Affairs (VA) due to your narrative reason for separation not meeting the statutory basis for a hardship discharge. The Board fully recognizes the distinction between a dependency discharge as opposed to a hardship discharge; however, the Board concluded that ineligibility for benefits due to the brevity of your service and specific reason for discharge does not constitute either an error or injustice. Rather, the Board observes that a change to your record for the sole purpose of improving your opportunity to receive benefits would be improper.

As a result, the Board concluded your narrative reason for separation and separation code are correct and remain appropriate. While the Board carefully considered the evidence you submitted in mitigation, even in light of the Wilkie Memos and reviewing the record 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 is attached 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,

6/14/2024

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