



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

██████████
Docket No. 5308-24
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 18 November 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional and your response to the AO. Although you were provided an opportunity to respond to the AO, you chose not to do so.

You enlisted in the Navy and commenced active duty on 3 March 1978. You honorably completed this enlistment, on 3 June 1982, and immediately reenlisted.

On 13 November 1987, you received non-judicial punishment (NJP) for an orders violation by departing your place of duty before providing a urine sample for drug testing. On 2 December 1987, you received NJP for wrongful use of cocaine. The following day you were issued an administrative remarks (Page 13) counseling concerning deficiencies in your performance and/or conduct. You were advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge. Despite this, on 22 December 1987, you tested positive through urinalysis for use of cocaine.

On 13 January 1988, your official medical record indicates you were seen at the ██████████, where you stated you purposely took cocaine so you would fail the routine urinalysis in order to facilitate an administrative discharge.

Consequently, you were notified of administrative separation processing for misconduct – drug abuse, with Under Other Than Honorable Conditions (OTH) as the least favorable characterization of service. After you waived your associated rights, on 10 February 1988, your commanding officer recommended your discharge with an OTH. On that same date, you received NJP for wrongful use of marijuana. You again received NJP, on 17 February 1988, for wrongful use of cocaine. You were ultimately discharged with an OTH characterization on 19 February 1988.

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 characterization of service and be reinstated to the rank of MN2. You contend that: (1) while you were stationed in ██████████, a new policy was implemented where you had to work out each morning while wearing a white t-shirt and it was discovered that you were a battered wife because your fellow shipmates could see bruises all over your back and chest through your shirt, (2) as a result, you were sent for counseling at ██████████, where the sergeant convinced you to send your husband back to ██████████, (3) while you sat in his office, you called your husband and told him to meet you at home. That shore patrol went to your home with you, watched as your husband packed, and then took him to the airport, (4) you never saw your husband again and were devastated, (5) afterwards, your fellow shipmates treated you very differently, showing you no respect, (6) you were going to kill yourself but your roommate convinced you to do cocaine, (7) this has all been unbearable for you and you put it away all these years, (8) you had been a squared away 4.0 sailor and up for meritorious advancement and sailor of the year before your misconduct, (9) due to a new policy, all E-5s and above were discharged for drug use, while E-4s and below were rehabilitated, (10) you served almost 10 years, loved the Navy, and tried to do the right thing, but became a disgrace instead, (11) you had hidden this deep inside all these years and it's coming out now, (12) it is extremely painful and that the Navy should have helped you get through this, as you believe you gave the Navy everything. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application including your DD Form 214, Enlisted Performance Record, and Report of Medical Examination.

As part of the Board's review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 20 September 2024. The AO noted in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, or that she exhibited any symptoms of a mental health condition. Her statement is not sufficiently detailed to provide a nexus with her misconduct. Additional records (e.g., mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to her misconduct) would aid in rendering an alternate opinion.

The AO concluded, “it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that her misconduct could be attributed to a mental health condition.”

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP's, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved multiple drug offenses. 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 additionally considered the likely negative impact your repeated misconduct had on the good order and discipline of your command. The Board noted that you were given opportunities to address your conduct issues but continued to commit misconduct, which ultimately led to your OTH characterization of service. Furthermore, the Board concurred with the AO and determined that there is no evidence that you were diagnosed with a mental health condition in service or that you exhibited any symptoms of a mental health condition. The Board further agreed that your statement was not sufficiently detailed to provide a nexus with your misconduct. Finally, the Board agreed that additional records, as detailed above, would aid in rendering an alternate opinion.

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, 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,

12/18/2024
