



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

██████████
Docket No. 6914-24

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 10 January 2025. 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.

You enlisted in the U.S. Marine Corps and began a period of active duty service on 29 December 2008. Your pre-enlistment physical examination, on 17 September 2007, and self-reported medical history both noted no psychiatric or neurologic symptoms, conditions or issues. As part of your enlistment application, on your self-reported medical history you expressly denied and/or answered in the negative for ever having: (a) pain or pressure in the chest, and (b) recurrent back pain or any back problem.

On 12 January 2009, the medical staff at ██████████ noted that you had suffered certain medical problems prior to joining Marine Corps and that you failed to properly disclose your injuries and pains when enlisting. ██████████ medical staff noted that you reported a past history of chest and back pain that had become worse after a car accident four years prior to joining the Marine Corps. Specifically, ██████████ mental health staff noted the following during your initial interview:

CC/RFR: Chest Pain and back pain...Potential for this recruit to complete training is poor. No Dx...SNR stated that she has been having chest and back pain since being here...Reported a past hx [history] of chest and back pain, that has gotten worse after a car accident four years ago.

Additionally, the examining Medical Officer (MO) specifically concluded: (a) you were not currently experiencing any mental health issues warranting your discharge, and (b) your prognosis for successful completion of recruit training if retained was poor. The MO released you without a formal mental health diagnosis and without a requirement for any mental health follow-up.

Following your mental health evaluation, your command notified you that you were being processed for an administrative discharge by reason of defective enlistment and induction due to a fraudulent enlistment as evidenced by the non-disclosure of a physical or mental condition that existed prior to entry (EPTE) into the naval service. On 6 February 2009, your command issued you a "Page 13" entry where you acknowledged your fraudulent entry for pre-service undisclosed "chronic back pain and chest pain, EPTS."¹ Ultimately, on 6 February 2009, you were separated from the Marine Corps for a fraudulent enlistment with an uncharacterized entry level separation (ELS) discharge characterization and were assigned an RE-3P 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 Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, your desire for a discharge upgrade and change to your reason for separation. You contend that: (a) you were not aware that because of a previous fainting incident pre-service you would be penalized, (b) it wasn't a known condition and only happened once from dehydration, (c) you have severed anxiety and panic attacks, but they had never been diagnosed so there was no reason or way you could inform the Marine Corps about any previous history, (d) you did not have a continuous pattern of, nor did you have a diagnosis or treatment, and (e) you were injured in basic training and to this day such injury prevents you from your full capabilities. For purposes of clemency and equity consideration, the Board considered the totality of the documentation 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 18 October 2024. As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

¹ EPTS corresponds to "Existed Prior to Service."

In January 2009, the Petitioner received a mental health evaluation and did not meet criteria for a mental health condition.

Petitioner claimed she incurred “severe anxiety and panic attacks” during military service, although she stated she had never received a formal mental health diagnosis. She contends her mental health concerns contributed to her separation from service.

Petitioner provided additional medical records from November 2008 documenting treatment of chest pain “for five months. The pain is intermittent primarily when she runs.”

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. She has provided no medical evidence in support of her claims. Unfortunately, her personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with the circumstances of her separation, which was related to another, pre-existing medical condition.

The Ph.D.’s AO concluded, “it is my clinical opinion that 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 from service to a mental health condition.”

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. In accordance with the Kurta, Hagel, 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, based upon its review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. The Board also concluded that your discharge from the Marine Corps was in no way related to any mental health concerns. The Board determined that your Marine Corps service records and DD Form 214 maintained by the Department of the Navy contained no known errors. Based on your precise factual situation and circumstances at the time of your discharge, the Board concluded that your command was justified in separating you for a fraudulent enlistment.

The Board noted that a fraudulent enlistment occurs when there has been deliberate material misrepresentation, including the omission or concealment of facts which, if known at the time, would have reasonably been expected to preclude, postpone, or otherwise affect a Marine’s eligibility for enlistment. The Board determined that you had a legal, moral, and ethical obligation to remain truthful on your enlistment paperwork. The Board determined the record clearly reflected that your concealment of certain material facts regarding your medical history and injuries due to your car accident was willful and intentional and demonstrated you were unfit for further Marine Corps service. The Board concluded that had you properly and fully disclosed your pre-service medical history, you would likely have been disqualified from enlisting in the Marine Corps. 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 otherwise be held accountable for your actions.

Moreover, the Board noted that separations initiated within the first 180 days of continuous active duty will be described as ELS except when an Honorable discharge is approved by the Secretary of the Navy in cases involving unusual circumstances not applicable in your case.

The Board noted that VA discharge characterizations and/or eligibility determinations for health care, disability compensation, and other VA-administered benefits are for internal VA purposes only. The Board concluded that such VA discharge characterizations and/or eligibility determinations are not binding on the Department of the Navy and have no bearing on previous active duty service discharge characterizations.

Finally, the Board did not find a material error or injustice with your RE-3P reentry code. The Board noted that the RE-3P reentry code directly corresponds to: "failure to meet physical/medical standards," and was an appropriate and permitted designation given the totality of the circumstances in your case. The Board further noted that the RE-3P reentry code may not prohibit reenlistment, but requires that a waiver be obtained, and that recruiting personnel are responsible for determining whether you meet the standards for reenlistment and whether or not a request for a waiver of the reentry code is feasible. Therefore, the Board concluded you were assigned the correct reentry code based on the totality of your circumstances, and that such reentry code was proper and in compliance with all Department of the Navy directives and policy at the time of your discharge.

As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your intentional failure to disclose your medical history clearly merited your uncharacterized ELS 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. 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,

1/20/2025

