



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

[REDACTED]
Docket No. 9741-24
Ref: Signature Date

[REDACTED]
[REDACTED]
[REDACTED]

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 you did not file your application in a timely manner, the Board waived the statute of limitation 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 11 April 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 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, 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) of a qualified mental health provider. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

You enlisted in the Navy and began a period of active duty on 4 October 2005. On 31 May 2007, you received nonjudicial punishment (NJP) for violations of the Uniform Code of Military Justice (UCMJ) under Articles 86 and 87, respectively, for a period of unauthorized absence (UA) and for missing movement.

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 Release or Discharge from Active Duty (DD Form 214) reveals that you

were separated, on 20 July 2007, with a General (Under Honorable Conditions) (GEN) characterization of service, narrative reason for separation of "Misconduct (Serious Offense)," separation code of "JKQ," and a reentry code of "RE-4." Your separation code indicates you were separated utilizing notification procedures.

You previously applied to the Naval Discharge Review Board (NDRB) seeking an upgrade of your characterization to "Honorable." In your request to the NDRB, you contended that your discharge should be upgraded because your misconduct was due to being harassed by other military members. However, you produced no evidence in support of your claim and your request was denied on 15 January 2015.

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, Kurta, and Hagel Memos. These included, but were not limited to, your desire to upgrade your discharge and reinstate your veteran education benefits. You contend that you experienced significant grief over the loss of your grandfather, he raised you as a parent, you initially returned home for his funeral but then failed to return this resulted the prolonged period of UA, and this formed the basis for your involuntary administrative separation. You state that you felt lost at the time but that your misconduct is not a true representation of how you carry yourself. Additionally, you state that you have a 70 percent disability rating after being diagnosed by the Department of Veteran Affairs (VA) with mental health issues; to include major depression, anxiety, panic attacks, and "other things" in your medical records. In support of your contentions and the purpose of clemency and equity consideration, you submitted a personal statement in which you further claim to have enclosed relevant documentation, including medical letters and letters of support; however, no such accompanying records were received with your application.

Because you based your claim for relief primarily on your contentions that you experienced either post-traumatic stress disorder (PTSD) or mental health condition which you believe may have mitigated the circumstances of your misconduct, the Board also considered the AO. The AO stated 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 psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. In the 2015 NDRB, she noted "harassment from other military members," as cause of her misconduct. However, in her current petition she noted mental health issues as having caused her misconduct; this inconsistency may represent lack of candor. Additional records (e.g., post-service 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 clinical opinion that there is insufficient evidence of a mental health condition that existed while in service. There is insufficient evidence to attribute her misconduct to a mental health condition."

After thorough review, the Board concluded the potentially mitigating factors you submitted for consideration were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP, 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. Additionally, the Board concurred with the AO regarding the insufficiency of mental health evidence in support of your contentions and the concerns regarding the significant shift in your contentions from those submitted to the NDRB in 2015 as compared to your current mental health claims. Additionally, the Board found you were already granted significant clemency with respect to the mitigating factor of your prolonged UA occurring in conjunction with your grandfather's death when you were processed for separation via notification procedures rather than board procedures; thereby resulting in your GEN discharge.

Regarding your request for reinstatement of your veteran education benefits, the Board noted that entitlement to veteran benefits falls under the cognizance of the VA and is not within the Board's discretion to grant or deny. Further, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities.

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 and discipline clearly merited your discharge. 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 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,

4/29/2025

