



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

██████████
Docket No: 3570-21
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 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 19 November 2021. 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, applicable statutes, regulations, and policies, to include the Don't Ask, Don't Tell Repeal Act of 2010, the Under Secretary of Defense Memo of 20 September 2011 (Correction of military records following repeal of 10 U.S.C. §654), and the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice or clemency determinations (Wilkie Memo).

You enlisted in the Navy and began a period of active service on 22 August 1980. You served without incident during expeditionary duty aboard the ██████████. While serving abroad at ██████████, you earned detaching enlisted performance trait marks of 3.6 in professional performance and 3.4 in military behavior prior to reporting for duty aboard the ██████████ on 8 February 1983. On 3 November 1983, you received non-judicial punishment (NJP) for disobeying a direct order from your commanding officer (CO) to complete your damage control qualifications within six months of reporting aboard the ship and an unspecified false official statement. Your punishment included a suspended reduction in rate and 45 days of restriction, with the directive from your CO to immediately process you for administrative discharge. You acknowledged reviewing a derogatory enlisted performance evaluation; although your official record does not contain that evaluation, the counseling entry

reflects that you declined to make a statement. Although your official records do not contain copies of your administrative separation processing documents, a naval message from your commanding officer to Naval Personnel Command specifies that you were notified of administrative separation processing for commission of a serious offense on 4 November 1983, in accordance with applicable regulations and that you signed a statement of awareness on 7 November 1983, acknowledging that your characterization of service might be under other than honorable (OTH) conditions and waiving your rights to representation by counsel, to consideration before an administrative separation board, and to submit a statement on your behalf. You further waived your right of a minimum of two working days to respond. In the message forwarding his recommendation to separate you with an OTH characterization of service, your CO outlined the misconduct from your NJP which constituted the basis of the serious offense. Your CO stated that you continually demonstrated a complete disregard for authority by disobeying orders and lying, that your continued presence was disruptive to good order and discipline, that you had no potential for future service, and that you did not desire to remain in the Navy. Your discharge was approved and you separated on 25 November 1982.

The Board carefully weighed all potentially mitigating factors, such as your desire to upgrade your characterization of service, your contention that your command processed you for administrative separation after, and only because, you informed them of your sexual orientation, and your contention that the laws and rules have changed regarding DADT since 1983. The Board may grant a request to upgrade a discharge that was based on sexual orientation when two conditions are met: (1) the original discharge was based solely on "Don't Ask Don't Tell" (DADT) or similar policy, and (2) there were no aggravating factors such as misconduct. When aggravating factors such as misconduct exist, the Board must comprehensively review the record and consider whether a nexus exists between the misconduct for which you were discharged and your sexual orientation. The Board noted that you committed a serious offense for which you received NJP and an expeditious separation for that basis. Your record contains no indication that your sexual orientation was known or considered at the time of your NJP and administrative separation processing; rather, your CO expressly endorsed your disregard for authority, disobeying orders, and lying as the basis for your discharge. As such, the Board could not determine a nexus between your misconduct and your claimed admission. The Board further noted you did not submit advocacy letters or post-service documents to be considered for clemency purposes. Based upon this review, the Board concluded the potentially mitigating factors you presented were insufficient to warrant relief. Specifically, the Board determined that your misconduct outweighed these mitigating factors. 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

