



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

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Docket No: 7743-21
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 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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 10 January 2022. 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 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice or clemency determinations (Wilkie Memo).

You enlisted and began a period of active duty in the Navy on 20 June 2001. You accepted a commission as an officer in the Navy and began an additional period of active duty on 1 April 2013. On 28 March 2019, you were found guilty by the Superior Court of █, County of █, of 11 counts of lewd and lascivious acts on a minor and two (2) counts of annoying or molesting a child under the age of 18. On 14 June 2019, you were sentenced to be confined for three (3) years and four (4) months, to pay restitution fines and fees, upon release from custody register as a sex offender, and an active criminal protective order was issued against you through 14 June 2029. On 28 June 2019, your commanding officer (CO) submitted a civil action report recommending you be detached for cause. Your CO further recommended, if your name was on a promotion list, said promotion be delayed or removed and that you show cause for retention in the naval service. The CO added, "[Petitioner's] actions are contradictory to good order and discipline within my command, service discrediting, and he has no potential for future Naval Service."

You were directed to show cause for retention before a Board of Inquiry (BOI). The BOI convened on 18 September 2021 and the members unanimously found that the preponderance of evidence supported separation. The members unanimously recommended that you be separated from naval service with an other than honorable characterization of service. On 16 April 2021, Chief of Naval Personnel also recommended you be separated with an other than honorable characterization of service for misconduct due to sexual perversion. On 21 April 2021, Assistant Secretary of the Navy (Manpower and "Reserve Affairs) approved your discharge.

You were separated on 30 June 2021 with an other than honorable characterization of service by reason of misconduct due to sexual perversion. At the time of separation, you had completed 20 years and 10 days of active service. 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 have your DD 214 corrected to reflect your assertions that you have 20 years and 10 days of qualifying service, and that 20 years of active duty is required in order to obtain a military pension.

Based upon this review, the Board concluded these potential mitigating factors were insufficient to warrant relief. Specifically, the Board considered the totality of the circumstances to determine whether relief is warranted in the interests of justice. These included, but were not limited to, your contentions noted above. Additionally, the Board considered your submission of supporting documentation. Further, the Board noted you were sentenced to state prison and incarcerated on 14 June 2019 to complete a total prison term of three (3) years and four (4) months. Consequently, you incurred a time lost totaling 747 days. As such, your DD 214 accurately reflects 17 years, 9 months and 5 days; and not the contended 20 years required for active duty retirement. Based upon this review, the Board concluded that the potentially mitigating factors in your case were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your civil conviction and BOI proceedings, outweighed these mitigating factors.

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 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,

2/9/2022



Executive Director

Signed by: 