



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. 0967-22
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 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 6 March 2023. 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 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 duty on 16 November 2004. On 1 October 2014, you received nonjudicial punishment (NJP) for two specifications of violating a lawful general order [sexual harassment] and one specification of assault. You were awarded an oral reprimand, forfeiture of one-half month's pay per month for one month, and reduction to pay grade E-5. Your reduction to pay grade E-5 was suspended for six months.

On 15 August 2017, you were found guilty at a general court-martial (GCM) of one (1) specification of violating a general order [sexual harassment] and seven (7) specifications of assault consummated by a battery. You were sentenced to be confined for a period of 18 months, to be reduced in rank to E-1, to forfeit all pay and allowances, and to a Bad Conduct Discharge (BCD). Per your pretrial agreement (PTA), dated 8 June 2017, the Convening Authority (CA) would disapprove all confinement in excess of six (6) months. On 14 November 2017, the CA approved your sentence as adjudged, despite your PTA. On 31 May 2018, the

United States Navy-Marine Corps Court of Criminal Appeals (NMCCA) reviewed your case and noted the CA's action incorrectly approved the sentence as adjudged, despite the pretrial agreement requiring the CA to disapprove all confinement over six (6) months. The NMCCA took corrective action by only affirming six months of your confinement sentence. Subsequently, you were discharged with a BCD on 26 September 2018.

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 the confinement of six months accurately reflected in your record. The Board noted that you originally requested on your application that the Board consider your debt to the Defense Finance and Accounting Service as erroneous; however, you later withdrew that contention. Based on your request, the Board did not consider the debt issue.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board found that your record accurately reflects that only six months of your confinement sentence was approved. In making this finding, the Board considered the aforementioned NMCCA decision that corrected the CA's action in your case. As a result, the Board found insufficient evidence of error or injustice with your GCM record. 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 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,

3/22/2023

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Executive Director
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