

DEPARTMENT OF THE NAVY

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

> Docket No: 1413-22 Ref: Signature Date



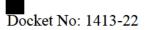
Dear Petitioner:

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 18 May 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, 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 elemency determinations (Wilkie Memo).

You enlisted in the Navy and began a period of active duty on 18 October 1989. During the period from 26 September 1991 to 15 October 1992, you received three instances of non-judicial punishment (NJP). Your offenses were two instances of disrespect toward a superior commissioned officer, failure to obey an order or regulation, three specifications of disrespect toward a superior noncommissioned officer, failure to obey a lawful order of a commissioned officer, drunk and disorderly conduct, and assault.

On 16 October 1992, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to commission of a serious offense and pattern of misconduct. The notification advised that if separation was approved, the least favorable description of service authorized in your case would be under Other Than Honorable (OTH) conditions. You were advised of, and waived your procedural rights to consult with military counsel and to present your case to an administrative discharge board (ADB). Your commanding officer (CO) then forwarded your administrative separation package to the



separation authority (SA) recommending your administrative discharge from the Navy with an OTH characterization of service. The SA approved the CO's recommendation and directed your OTH discharge from the Navy by reason of misconduct due to commission of a serious offense and, on 15 December 1992, you were so discharged. You previously applied to the Naval Discharge Review Board but were denied relief on 30 November 1994.

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 upgrade your discharge character of service and assertions that your consumption of alcohol resulted in several fights and you understand that you were in error; however, you were overwhelmed by the death of the woman that became your mother when you lost your mother. You contend that you were given an OTH discharge because you refused rehabilitation for six months and there was a disparity in treatment of Sailors by your command. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

Based upon this review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your three NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded it showed a complete disregard for military authority and regulations. Further, the Board noted you provided no evidence in support of your allegations of disparate treatment. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization. After applying liberal consideration, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting clemency in the form of an upgraded characterization of service. Accordingly, given the totality of the circumstances, the Board determined 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.

