



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: 2290-22

Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 4 April 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).

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Navy and began a period of active duty on 5 September 1990. On 10 October 1995, you began a period of unauthorized absence (UA) which lasted two days. On 12 April 1996, you began a second period of UA which lasted 53 days, 14 hours, 57 minutes, and resulted in your apprehension. On 7 June 1996, you received nonjudicial punishment (NJP) for a period of UA. On 3 July 1996, you began a third period of UA which lasted 33 days, 19 hours, 46 minutes and resulted in your apprehension. On 1 October 1996, you were convicted by special court martial (SPCM) for the following offenses: UA, larceny, making false claims, and indebtedness in the amount of \$784.80. On 9 March 1997, your spouse filed civil charges against

you for alleged rape, at which point, a family violence report was initiated. On 14 April 1997, you were apprehended by civil authorities for rape and writing bad checks . On 22 April 1997, an NCIS report indicated that you attempted to rape and assault your spouse while she did not consent have sexual relationships with you. On 28 August 1997, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to commission of a serious offense. On 18 September 1997, you elected to waive all your procedural rights. Subsequently, your commanding officer recommended an other than honorable discharge characterization of service by reason of misconduct due to commission of a serious offense. On 24 October 1997, you were discharged.

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 contention that you were young and going through a divorce, that your wife was going to take your children following your divorce, and that you wanted out of the Navy. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your repeated misconduct, as evidenced by your NJP, SPCM, and civilian arrest, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and determined it showed a completed disregard for military authority and regulations. As a result, the Board concluded your conduct was a significant departure from that expected of a sailor and continues to warrant an OTH characterization of service. Finally, the Board noted you did not submit any documentation or advocacy letters to be considered. 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,

4/26/2022

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Executive Director
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