



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

█  
Docket No. 2294-22  
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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 22 July 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 this 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).

A review of your record reveals that you enlisted in the Navy and commenced a period of active duty on 18 November 2002. On 28 June 2007, you were convicted by special court-martial for unauthorized absence, failure to obey an order or regulation, larceny, assault consummated by a battery, unlawful entry, drunken and disorderly conduct, and communicating a threat. Your sentence included that you be discharged from the Navy with a Bad Conduct Discharge (BCD). You were discharged, on 4 December 2008, after completion of your appellate review.

You filed an application for review of your discharge with the Naval Discharge Review Board (NDRB) and, on 15 July 2021, it determined that your discharge characterization should be upgraded to General (Under Honorable Conditions). According to the NDRB, the "characterization of service assigned to the Applicant was inequitable given his overall record of service and the isolated nature of his misconduct. The Board also noted the Applicant's successful post-service accomplishments . . . ." On 28 February 2022, however, the Secretarial Review Authority disagreed with the NDRB's decision, and found:

that the characterization of your discharge was equitable and consistent with the characterization of discharge given others in similar circumstances. With regard to Issue 3, although I find the Applicant commendable for his post-service accomplishments, I do not concur that his post-service conduct sufficiently mitigated the seriousness of the offenses for which his discharge was awarded. The Applicant's record shows he was convicted by a Special Court-Martial of violating Uniform Code of Military Justice Articles 86, 92, 121, 128, and 134. The Applicant's actions, which included assaults on two civilians in [REDACTED] including threats to kill them, were egregious and undermined the good order and discipline of the command to which he was assigned.

Based on the decision by the Secretarial Review Authority, your discharge characterization did not change.

In your current petition, you have requested that your characterization of service be upgraded from bad conduct to General (Under Honorable Conditions) or Honorable. You also seek medical and/or disability consideration for a significant shoulder injury suffered during a wartime deployment resulting in the scope and reconstruction of your shoulder (front and back), compounded with the partial removal of your collar bone. In support of your request, you contend that your BCD is an insurmountable life burden to have on your permanent record. You state that you had a faithful and honest term of service until your involvement in an alcohol related incident, which regrettably took place while you were deployed to the [REDACTED], on or about, your four year and eleven month service mark. Despite the loss of all of your benefits, including healthcare, your collar bone had to be surgically removed as result from an injury suffered while you were deployed. You state you also lost your G.I. Bill. In addition, you state that you worked extremely hard to graduate from community college, college, and law school. Additionally, you were able to pass the bar exam your first attempt and you are a practicing attorney that is a current member of the [REDACTED] Bar Association in good standing.

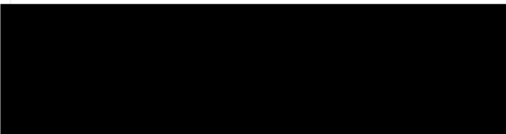
The Board carefully considered your arguments, including the entirety of your petition and all of its enclosures, and it disagreed with your rationale for relief. The Board reviewed your request for upgrade of your discharge in light of the Wilkie Memo, and it carefully considered the matters that you provided in support of your request, including your post-service accomplishments. The Board, however, disagreed with your rationale for relief. In reaching this determination, the Board substantially concurred with the rationale of the Secretarial Review Authority. The Board balanced the serious misconduct that you engaged in while you were on active duty, in light of your active duty service and educational and professional attainments post-service, and determined that your mitigation evidence did not outweigh the serious misconduct. While laudable, in view of the several factors set forth in the Wilkie Memo, the Board determined that the educational and professional accomplishments that you attained fell short of the substance it would require in order to favorably grant clemency under these circumstances. In making this finding, the Board noted that you actually have been able to overcome, in large part, the BCD you earned while serving in the Navy based on your accomplishments. The Board commended your post-discharge good character but, in the absence of more fulsome clemency materials, determined your request for an upgrade to your discharge characterization was not supported by the interests of justice.

With respect to your request for a medical and/or disability retirement, the Board noted that in order to qualify for military disability benefits through the Navy's Disability Evaluation System with a finding of unfitness, a service member must have been found to be unable to perform the duties of their office, grade, rank or rating as a result of a qualifying disability condition. In denying your request for a disability discharge, the Board observed that there were no findings that you had a qualifying disability condition while you were on active duty. Rather, the Board found that, contrary to findings of unfitness, you were discharged as the result of the imposition of a BCD as a result of a court-martial. As a result, the Board concluded you were not eligible for disability processing, even if there was evidence that you were unfit for continued naval service at the time of your discharge, because your punitive discharge would have precluded any disability processing based on existing regulations. 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 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,

8/9/2022

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Executive Director

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