



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: 2309-22
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 25 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, 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).

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 U.S. Navy Reserve and began a period of active duty on 25 August 1992. On 1 February 1993, you received your first nonjudicial punishment (NJP) for nine specifications of alteration of records and failure to obey a direct order. On 23 February 1993, you were found guilty at a summary court-martial (SCM) of misbehavior of a sentinel and were sentenced to forfeit █ pay per month for one month. You received administrative remarks capturing any further deficiencies in your performance and/or conduct will terminate the reasonable period of time for rehabilitation this counseling/warning entry infers and may result in disciplinary action and processing for administrative separation. On 28 July 1993, you received a second NJP for

larceny. On 28 July 1993, you were notified of your commanding officer's (CO) intent to recommend to the separation authority that you be discharged for pattern of misconduct (POM) and commission of a serious offense (COSO) at which time you elected your right to consult with counsel, obtain copies of documents to be forwarded to the separation authority, and to submit matters on your behalf. The CO subsequently recommended your separation on 29 July 1993 and stated:

[Petitioner] declined an administrative board. He has been a burden to the command since he attempted to check in with a forged service record in December 1992, without having checked out from Recruit Training Command, ██████████ [Petitioner's] disciplinary record is evidence that he cannot be trusted. His supervisors report that he is unreliable and possesses no potential for future naval service. I do not consider his 13 months of naval service to be honorable service, and therefore recommend an other than honorable (OTH) discharge.

On 1 September 1993, the separation authority directed you be discharged with an OTH by reason of POM and, on 1 October 1993, you were so discharged.

The Board carefully reviewed your application and 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 and your contentions that, "the understanding of circumstances of deaths in family as soon as I started bootcamp and trying to the G.I. Bill." The Board further noted you did not submit character letters or post-service accomplishments for consideration. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your two NJP and SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and determined it showed a complete disregard for military authority and regulations. Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating VA benefits, or enhancing educational or employment opportunities. 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 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,

5/12/2022

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Executive Director

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