



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: 2386-22

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 8 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).

You enlisted in the Navy and commenced active duty on 10 August 1995. Your pre-enlistment physical examination on 20 April 1995 and self-reported medical history noted no neurologic or psychiatric conditions or symptoms. Upon the completion of initial recruit training, on 24 November 1995 you reported for duty on board the █ in █, █.

On 18 September 1997, pursuant to your felony guilty plea, you were convicted of committing a lewd act upon a child in Municipal Court of the █ Judicial District, County of █ State of █ Municipal Court). On your written guilty plea submitted to the Municipal Court, you declared under the penalty of perjury:

I now plead guilty to the charge...and admit that on the date charged I committed a lewd act upon the body of a child with the intent of arousing my sexual

desires...I am entering my plea freely and voluntarily, without threat or fear to me or anyone closely related to me...I am pleading Guilty because in truth and in fact I AM GUILTY.

You were sentenced to confinement, a fine, public service, and probation for three years. As part of your punishment, you were also required to annually register in the State of ██████████ as a sex offender.

Following your felony conviction, on 3 February 1998, you were notified of administrative separation proceedings by reason of misconduct due to the commission of a serious offense. You consulted with counsel and waived your right to request an administrative separation board. In the interim, your separation physical examination, on 7 April 1998, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms. Ultimately, on 14 April 1998, you were discharged from the Navy for misconduct with an other than honorable (OTH) characterization of service and assigned an RE-4 reentry code.

On 6 March 2019, the Board denied your initial petition to upgrade your discharge. On 15 November 2021, you filed a petition to terminate your requirement to annually register as a sex offender. On 28 December 2021, the Superior Court of ██████████, County of ██████████ granted your petition to terminate your sex offender registration requirement.

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: (a) you were wrongly accused of a crime you never committed, (b) your record is now clear of the charges, (c) you were accused of and paid for twenty-five years for a crime you never committed, (d) you have court documents showing the conviction was recently removed from your criminal record and deleted from all criminal databases, and (e) you have always maintained that the reason for your discharge was a false accusation of sexual misconduct. However, given the totality of the circumstances, the Board determined that your request does not merit relief.

First and foremost, the Board unequivocally disagreed with any argument or suggestion that you were wrongly accused and convicted of a crime you never committed. The Board found your contention without merit based on your admission of guilt under penalty of perjury. Court documents clearly show that you admitted and pleaded guilty to committing a lewd act upon a child in Municipal Court. The Board determined that a plea of guilty is the strongest form of proof known to the law. Therefore, based upon your plea of guilty alone and without receiving any evidence in the case, the Municipal Court found you guilty of the offense to which you pleaded guilty. The Board determined that you pleaded guilty because the evidence in the case would have proven that you were indeed guilty, and the Board was not willing to re-litigate well-settled facts from over twenty-four years ago that are no longer in dispute absent any reliable and/or credible evidence to the contrary.

The Board also determined your contention that your record is clear of the charges is not


supported by the evidence you submitted. The Board noted that merely removing an annual requirement to register as a sex offender is not tantamount to expunging your record of a criminal conviction. Accordingly, the Board concluded that your underlying criminal felony conviction was never removed from your record.

Additionally, the Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade and determined that Sailors should receive no higher discharge characterization than is due. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board noted that, although one's service is generally characterized at the time of discharge based on performance and conduct throughout the entire enlistment, the conduct or performance of duty reflected by only a single incident of misconduct may provide the underlying basis for discharge characterization. The Board determined that characterization under OTH conditions is generally warranted for misconduct and is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a sailor. The Board also determined that the record clearly reflected your misconduct involving a minor child was willful, egregious, and indicated you were unfit for further service. Moreover, the Board noted that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not otherwise be held accountable.

The Board also noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. 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. The Board carefully considered any matters submitted regarding your character, post-service conduct and accomplishments, however, even in light of the Wilkie Memo and reviewing the record holistically, the Board still concluded that given the totality of the circumstances your request does not merit relief. Accordingly, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your serious misconduct continues to merit and OTH characterization.

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,


5/1/2022

