



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

█
Docket No: 2846-22/
10166-04
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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session on 22 June 2022, has carefully examined your current request. The names and votes of the members of the panel 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 carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. You presented as evidence a Bureau Investigation Report from the █, a decision rating from the Department of Veterans Affairs (DVA), a certificate of appreciation, a █ Certificate Residency, and a Police Report from the █. After careful and conscientious consideration of the entire record, the Board determined that the documentation that you provided, even though not previously considered by the Board, was insufficient to establish the existence of probable material error or injustice. In making this finding, the Board noted that the record contains documented evidence that you received the required due process with regard to the misconduct that formed the basis for your Other than Honorable (OTH) discharge.

After reviewing the circumstances of your civil conviction for conspiracy to defraud the U.S., theft of government property, and Aiding and Abetting in the exportation of defense articles in the U.S. District Court, Southern District of [REDACTED] the Board noted that an Administrative Discharge Board (ADB) determined you committed misconduct due to civil conviction and recommended you receive an OTH characterization of service. Based on this evidence, the Board found no error or injustice with your OTH characterization of service. Further, the Board considered the seriousness of your misconduct and the prejudicial effect your conduct had on the Navy. In weighing the seriousness of your misconduct, the Board noted that you pled guilty to your crimes pursuant to a plea agreement and were sentenced to 12 months of confinement. The Board noted that there is no evidence in your record, and you submitted none, to support your contention that your previously submitted documents and service record was not considered by the Board. The Board also noted that a Sailor's service is characterized at the time of discharge based on performance during the current enlistment. Finally, the Board noted while commendable, your post service conduct does not excuse your conduct while enlisted in the Navy or the basis for your discharge. 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 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,

7/4/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]