



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

█  
Docket No: 2867-22  
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.

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 May 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 entered active duty with the Navy on 31 October 2001. According to the information in the record. On 27 June 2002, you received non-judicial punishment (NJP) for underage drinking and driving under the influence (DUI). On 20 September 2002, you were released from the Level I Treatment Program due to non-compliance with the program rules and regulations. During the period from 20 October to 14 November 2002, you received NJP for sleeping on watch and seven specifications of UA from restricted muster. Although the Board lacked your entire service record, the Board relied on a presumption of regularity that you were notified of the recommendation that you be discharged by reason of misconduct due to pattern of misconduct. After waiving your rights, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge by reason of misconduct due drug abuse with an other than honorable (OTH) characterization of service. The SA approved the recommendation, and on 29 September 2003, you were so discharged.

As stated previously, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to rebut the presumption, the Board presume that you were properly discharged from the Navy.

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 desire to upgrade your discharge in addition to your contention that your discharge should be upgraded to a General (Under Honorable Conditions) discharge because you received four Good Conduct Medals (GCM) during the time you served in the Navy. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

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 three NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and determined that your misconduct shows a complete disregard for military authority and regulations. Further, despite your assertions, the Board noted that a review of your record revealed that you were not eligible to receive the GCM. The document submitted with your application only documents each GCM eligibility start date based on your NJPs. As a result, the Board concluded that your conduct was a significant departure from that expected from 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.

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,

5/16/2022

