



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: 2937-22
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 18 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 enlisted in the Navy and began a period of active duty on 3 December 1981. On 2 February 1982, you were meritoriously advanced to E-2 at Recruit Training Command, █. On 12 April 1982, after reporting to Service School Command, you commenced a period of unauthorized absence (UA) which lasted until 4 May 1982 (22 days). On 7 May 1982, you received nonjudicial punishment (NJP) for the aforementioned UA. Subsequently, you were issued administrative remarks retaining you in the Naval Service, and advising you that further misconduct may result not only in disciplinary action, but in processing for administrative discharge. On 17 May 1982, you were notified of your commanding officer's (CO) intent to recommend to the separation authority that you be discharged by reason of unsuitability due to apathy and defective attitude; at which time, you were provided, and waived, your procedural rights. Your CO's recommendation further captured, "█" was dropped from Job Oriented Basic Skills (JOBS) School due to his negative attitude. He has been counseled regarding his willingness and ability to function in the Navy. However, these counseling sessions have failed

to improve his negative attitude or behavior. Based upon the recommendations of my staff and his own record, it has been determined that he lacks motivation for continued service.” On 19 May 1982, the separation authority directed you be discharged with a character of service type warranted by your service record by reason of unsuitability and, on 20 May 1982, you were so discharged with a General (Under Honorable Conditions) characterization of service.

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. The Board also considered your contentions that, “[s]oon after I enlisted into the Navy I was confused as to my sexual identity. In effort to being honest I consulted with the Chaplain and expressed my sexuality confusion, and was reluctant to be confined with men while out to sea. I thought at the time that I would submit to or initiate sexual advances towards a shipmate.” 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 NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and weighed it against the brevity of your active duty service. Further, the Board considered that characterization of service is based in part on conduct marks assigned on a periodic basis. Your overall trait average was 2.8 and your military behavior/conduct mark was 2.8. At the time of your service, a conduct average of 2.8 with an average of 3.0 in military behavior/conduct was required to be considered for an Honorable characterization of service. As a result, the Board concluded significant negative aspects of your active service outweighed the positive aspects and continues to warrant a General (Under Honorable Conditions) 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.

Regarding your assertions of sexual identity, the Board determined that the repeal of 10 U.S.C. 654 and UNSECDEF Memo of 20 Sep 11 (Correction of Military Record following Repeal of U.S.C. 654) do not apply in your case. In making this determination, the Board noted you were not processed for separation based on your sexual orientation or identity.

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,

6/10/2022

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Executive Director

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