



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

█
Docket No: 2939-22
Ref: Signature Date

█
Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 you did not file your application in a timely manner, the Board the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 10 June 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 to the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo), and 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 service on 30 October 2006. You received nonjudicial punishment (NJP), on 8 May 2008, for violations of Article 86, for leaving your place of duty, and Article 92, for failure to obey a lawful order or regulation. Although your punishment included a reduction in grade, it was suspended and did not take effect until the suspension was vacated after you committed additional misconduct for which you received a second NJP on 23 June 2008. Your violation of Article 91 indicates that you were insubordinate toward a petty officer. Subsequently, your command processed you for administrative discharge. Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties.

Based on the information contained on your Certificate of Release or Discharge from Active Duty (DD Form 214), you were separated from the Navy on 11 July 2008, with an "Other Than Honorable" characterization, your narrative reason for separation is "Pattern of Misconduct," your separation authority is "MILPERSMAN 1910-140," your separation code is "HKA," and your reenlistment code is "RE-4."

You previously applied to the Department of Veterans Affairs (VA) in 2009 contending that your pattern of misconduct was due to a conflict with your petty officer and chiefs, that your supervisors created a hostile work environment, and that you were subject to racial slurs and discrimination. You also unsuccessfully sought an upgrade of your discharge in 2010 from the Naval Discharge Review Board (NDRB), contending that you were treated unfairly by your command, that you were harassed at work, and that you were punished for petty infractions.

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 and your contentions that you have submitted new evidence for consideration multiple times because the evidence from 2009 is false. 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 NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the negative impact it likely had on the good order and discipline within your command. Further, regarding your contentions, the Board does not have access to evidence which you might have previously submitted to the VA unless you include that with your application to this Board. However, in light of the 2009 VA document you submitted for review, the Board considered that the false evidence to which you are referring are the facts and circumstances of your military service outlined in the VA letter. In reviewing this evidence, the Board observed that this summary of facts is consistent with the available evidence documented in your official military personnel file. 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, the Board determined that your request does not warrant 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 is attached 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, _____

6/15/2022

