



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: 3405-22
11358-19
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.

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, considered your application on 25 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 previously applied to this Board for an upgrade to your characterization of service and were denied on 30 September 2020. Previous to this Board's denial, the Naval Discharge Review Board also denied your request for relief in April 2005.

In reviewing your application, the Board considered the totality of the circumstances to determine whether relief is appropriate today in the interests of justice in accordance with guidance provided by the Wilkie Memo. Accordingly, the Board carefully considered all potentially mitigating factors, such as your submission of supporting documentation and your desire to upgrade your discharge character of service and receive your VA benefits to treat your medical conditions. The Board also considered your contention that your case was seen at a "higher court", all charges against you were discharged, and you were reinstated back to your paygrade of E-5. For purposes of clemency consideration, the Board noted you provided an

advocacy letter from your mother; however, you did not provide supporting documentation describing post-service accomplishments.

Based upon this review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined 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 it showed a complete disregard for military authority and regulations. While the Board considered your statements regarding your medical conditions and remorse for your actions, they ultimately concluded there was insufficient mitigation evidence to offset your conduct. 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.

Additionally, be advised that the Board believes that you may be eligible for veterans' benefits, which accrued during your period of Honorable service from 18 September 1991 to 8 May 1993. However, your eligibility is a matter under the cognizance of the Department of Veteran Affairs (VA). In this regard, you should contact the nearest VA office concerning your rights, specifically, whether or not you are eligible for benefits based on your prior period of honorable 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,

6/14/2022

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Executive Director
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