



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: 3671-22

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 initial 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 reconsideration application on 24 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 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 commenced active duty on 10 February 2015. Your performance evaluation (Eval), for the period ending 2 September 2016, documented that you received non-judicial punishment (NJP) on 2 September 2016 for the drunken or reckless driving of a vehicle, and for failing to obey a lawful order governing a standing liberty policy. The Eval noted you received as punishment a reduction in rank to paygrade E-2, as well as restriction and extra duties for fourteen days. The Eval gave you a 1.0 out of 5.0 in "military bearing/character," and negatively endorsed your retention. The Member Data Summary contained in your service record documented the reduction in rank to E-2 occurring on 2 September 2016.

Based on your own admission, you stated you were arrested for public intoxication in the days preceding your separation. After you notified your command, you stated you did not receive

NJP, and were only required to give a speech about how alcohol affects a Sailor's career. You stated that *after* you were discharged you pleaded guilty to the civilian offense and paid a \$50 fine.

At the completion of your active duty service, on 9 June 2019, you were honorably discharged from the Navy but assigned an RE-4 reentry code. Your commanding officer noted in your separation Eval for the period ending 9 June 2019 that he was unable to recommend your retention due to an alcohol treatment failure immediately prior to your separation. In this regard, you were assigned the correct characterization and reentry code based on your factual situation.

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: (a) that it was an error to issue you an RE-4 code, (b) you were never found guilty of violating Article 134 of the UCMJ and there is no record of a court-martial, NJP, or any other punishment, (c) shipmates have attested to your true character and performance, (d) you have had no criminal infractions post-service, (e) one minor mistake does not warrant an RE-4 code, and (f) you want to serve your country again. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments but provided advocacy letters.

First and foremost, the Board disagreed with your contention that there was no NJP in your record. Your service record clearly indicated a September 2016 NJP for an alcohol-related incident. The Board did not believe that your record was otherwise so meritorious to deserve a change in your reentry code. The Board noted that you had not one, but two substantiated alcohol-related incidents on active duty. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. Furthermore, the Board determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not be held accountable for your actions. The Board determined that the record clearly reflected your active duty alcohol-related misconduct was intentional and willful and justified your negative retention/reenlistment recommendation and RE-4 code upon separation.

The Board also noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a reentry code to be automatically upgraded after a specified number of months or years. The Board carefully considered all matters submitted regarding your character and personal/professional accomplishments, however, even in light of the Wilkie Memo and reviewing the record holistically, the Board still concluded that given the totality of the circumstances your request does not merit relief.

Despite the fact that certain disciplinary and administrative records were not in your service record, the Board relied on a presumption of regularity to support the official actions of public officers. In the absence of substantial evidence to rebut the presumption, to include evidence submitted by the Petitioner, the Board presumed that you were properly discharged from the

Navy with an RE-4 reentry code. In the end, the Board concluded that you received the correct reentry code based on the totality of your overall circumstances, and that such reentry code was in accordance with all Department of the Navy directives and policy at the time of your discharge. After applying liberal consideration, the Board did not find evidence of an error or injustice that warrants changing your reentry code or granting clemency in your case. 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,



Executive Director