



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: 4037-22
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 17 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).

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Navy and began a period of active service on 19 January 2011. On 21 September 2011, you received non-judicial punishment (NJP) for making a false official. On 23 July 2013, you admitted to Naval Criminal Investigative Service (NCIS) for wrongful sexual contact with a minor prior to your entrance into the Navy, soliciting nude pictures of the minor while you were on active duty, and sending nude pictures to the minor while on active duty. The record reflects you were in violation of █ criminal code for the following charges: rape in the 1st degree, electronic solicitation of a child, communication with a minor for immoral purposes, and child pornography. As a result of the foregoing, on 13 September 2013, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to

the commission of a serious offense, at which point, you waived your right to consult with counseled, and a hearing before an administrative discharge board (ADB). On 16 September 2013, your commanding officer recommended your separation from naval service with an Other Than Honorable (OTH) character of service. On 19 September 2013, you were so discharge.

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 characterization of service and contentions that your discharge was due to false charges, and accusations for events that occurred while you were deployed. 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 statement to NCIS, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact your sexual misconduct involved a minor victim under the age of 10. While the Board considered your arguments, the Board noted that your statement to NCIS is contrary to your assertion of false accusation and charges. The Board further noted you did not provide any evidence to substantiate your allegations of error. 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.

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,

7/11/2022

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Executive Director
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