



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

█
Docket No: 4130-22
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 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 20 July 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 service on 20 July 1989. On 12 September 1989, you were convicted at a summary court martial (SCM) for false swearing. You were counseled regarding false swearing, on 4 January 1990, and you were notified further deficiencies may result in the initiation of administrative separation proceedings. Subsequently, you went on a period of unauthorized absence (UA) from 18 July 1990 until your surrender on 20 July 1990. On 29 January 1991, you were counseled regarding UA, and you were again notified further misconduct may result in the initiation of administrative separation proceedings. On 3 September 1991, you again went UA for two days. As a result, you received non-judicial punishment (NJP) for UA on 19 September 1991. A portion of your punishment was suspended, however, on 2 December 1991, you again went UA. As a result, the suspension of your punishment was vacated. On 18 December 1991, you received NJP for UA, dereliction of duty, and drunk and disorderly conduct. On 26 December 1991, administrative separation proceedings were initiated as a result of your misconduct due to the commission of a serious offense, and pattern of misconduct. You waived your right to consult with counsel, and a hearing of your

case before an administrative discharge board (ADB). On 24 January 1992, the separation authority approved and directed your separation with an Other Than Honorable (OTH) character of service by reason of misconduct due to pattern of misconduct. On 27 January 1992, you were discharged.

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. In addition, you express responsibility for your actions, contend you have service connected disabilities, and request help. For purposes of clemency consideration, the Board noted you provided an advocacy letter but no supporting documentation describing post-service accomplishments.

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 SCM and NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded it showed a complete disregard for military authority and regulations. Further, the Board considered that you were given multiple opportunities to correct your conduct but chose not to do so. Finally, the Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. 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. While the Board commends your post-discharge good character, 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.

The Board reviewed the correspondence you provided from the Department of Veterans Affairs (VA). Please note, decisions reached by the DVA to determine if former service members rate certain VA benefits do not affect discharge decisions made by the Navy. The criteria used by the VA in determining whether a former service member is eligible for benefits are different than that used by the Navy when determining a member's discharge characterization. Additionally, your request for an increase to your service-connected disability rating falls under the purview of the VA and not this Board. Consequently, this aspect of your request was not considered since it was a matter outside the statutory authority of this Board.

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,

8/9/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]