



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: 4245-22
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 8 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 commenced active duty on 22 January 1988. Your pre-enlistment physical examination, on 28 December 1987, and self-reported medical history both noted no neurologic or psychiatric conditions or symptoms.

On 8 March 1991, contrary to your pleas, you were convicted at a General Court-Martial (GCM) of both dereliction in the performance of your duties as a hospital corpsman, and for committing an indecent assault upon a female Marine with the intent to gratify your sexual desires. You were sentenced to confinement for one year, a reduction in rank to the lowest enlisted paygrade (E-1), forfeitures of pay, and a discharge from the Navy with a Bad Conduct Discharge (BCD). On 30 August 1991, the Convening Authority approved the GCM sentence. Upon the

completion of appellate review in your case, on 6 October 1994, you were discharged from the Navy with a BCD and assigned an RE-4 reentry code.

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) over the past thirty-two years since your court-martial, you have made it your primary endeavor every day to better yourself, (b) you have continued to serve others by working in healthcare in the civilian world and have been employed since your release, (c) you are entirely focused on helping veterans in your home state of ██████████ (d) many co-workers and former Navy colleagues have written letters on your behalf attesting to your character, work ethic, and integrity, (e) you were immediately remorseful because of the strain that burdened your family, but were also ashamed of how your situation impacted the Navy, your fellow Sailors, and your good name, (f) since your discharge you have worked exceedingly hard to prove to yourself, your family, and your community that you are truly a respectable man that can be relied upon and looked up to, (g) you now seek to restore your good name and honor so you can leave this unfortunate chapter of your life in the past and continue to move forward with a clear conscience and continue to provide for your family and serve veterans in your community, and (h) your outstanding post-service actions and contributions to your community and to veterans warrants a records correction under the clemency standard. For purposes of clemency consideration, the Board noted you provided supporting documentation describing post-service accomplishments and 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 GCM, outweighed these mitigating factors. The Board unequivocally did not believe that your record was otherwise so meritorious to deserve an upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that the indecent assault you committed, while acting in your professional capacity as a hospital corpsman, constituted a breach of trust and a significant departure from the conduct expected of a Sailor and corpsman. The Board concluded that the record clearly reflected your misconduct was intentional and willful and demonstrated you were unfit for further service. Moreover, the Board noted that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions.

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. Lastly, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. Accordingly, the Board determined that there was no impropriety or inequity in your discharge, and concluded that your egregious misconduct and disregard for good order and discipline clearly merited your BCD. In the end, the Board concluded that you received the correct discharge characterization based on the totality of your circumstances, and

that such action was in accordance with all Department of the Navy directives and policy at the time of your discharge.

The Board noted that, although it cannot set aside a conviction, it might grant clemency in the form of changing a characterization of discharge, even one awarded by a court-martial. However, the Board unanimously concluded that despite your contentions, this is not a case warranting any clemency. You were properly convicted at a GCM of serious professional misconduct of a sexual nature and the Board did not find any evidence of an error or injustice in this application that warrants upgrading your BCD. The Board carefully considered your personal statement and any matters submitted regarding your character (to include the no less than fourteen character reference letters), your post-service conduct, educational accomplishments, employment history, community service, 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.

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,

7/15/2022

