



**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: 4353-22

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 5 August 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 entered active duty on 25 March 1985. On 25 October 1985, you received non-judicial punishment (NJP) for unauthorized absence (UA). A portion of your punishment was suspended and you did not appeal your NJP. On 25 October 1985, you received a "Page 13" counseling warning (Page 13) documenting your NJP. The Page 13 warned you that any further deficiencies in performance and/or conduct may result in disciplinary action and in processing for administrative discharge. However, on 4 November 1985, you received a Page 13 documenting UA lasting approximately two hours and fifteen minutes.

On 12 November 1985, the suspended portion of your NJP from October 1985 was vacated and

enforced due to continuing misconduct. On 12 November 1985, you received NJP for UA and three separate specification of failing to obey a lawful order. You did not appeal your NJP.

On 14 November 1985, your command provided you notice that you were being administratively processed for separation from the Navy by reason of misconduct due to the commission of a serious offense and homosexuality due to your admission of being a bisexual. The least favorable discharge you could have received was an Other Than Honorable (OTH) conditions characterization of service. You waived your rights to consult with counsel, submit a written statement to the separation authority, and to request a hearing before an administrative separation board. Your commanding officer recommended to the separation authority that you receive a General (Under Honorable Conditions) (GEN) characterization of service. Ultimately, on 10 December 1985, you were discharged from the Navy with a GEN characterization of service and assigned an RE-4 reentry code. Your narrative reason for separation specifically stated “misconduct – commission of a serious offense” and not homosexuality.

The Don’t Ask, Don’t Tell Repeal Act of 2010, and the Under Secretary of Defense Memo of 20 September 2011 (Correction of Military Records Following Repeal of Section 654 of Title 10, United State Code), both set forth the Department of the Navy’s current policies, standards, and procedures for correction of military records following the “don’t ask, don’t tell” (DADT) repeal. The current policy now provides service Discharge Review Boards with the guidance to grant requests to change the characterization of service to “Honorable” or “General (Under Honorable Conditions),” narrative reason for discharge to “Secretarial Authority,” separation code to “JFF,” and reentry code to “RE-1J” when the original discharge was based solely on DADT or a similar policy in place prior to enactment of it, and there are no aggravating factors in the record, such as misconduct.

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 and the DADT repeal guidance. These included, but were not limited to: (a) you were discharged for your sexual preference, and (b) you would like to have full benefits as an honorably discharged service member. 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 NJPs, outweighed these mitigating factors. In making this finding, the Board did not believe that your record was otherwise so meritorious as to deserve a discharge 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 characterization under GEN or OTH conditions is generally warranted for misconduct and is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor. The Board determined that the record clearly reflected your misconduct was intentional and indicated 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.

Additionally, the Board concluded that DADT policy guidance did not apply to the circumstances surrounding your discharge. Your command processed you for two separate bases: misconduct due to the commission of a serious offense, and homosexuality. Thus, your separation processing and discharge was not based solely on the DADT policy and aggravating factors exist in your record.

The Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average in conduct was approximately 2.6. Navy regulations in place at the time of your discharge required a minimum trait average of 3.0 in conduct (proper military behavior) for a fully honorable characterization of service. The Board concluded that your conduct marks during your active duty career were a direct result of your serious misconduct which further justified your GEN discharge and RE-4 reentry code.

The Board also 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 generally will not 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 the Board concluded that your serious misconduct clearly merited your receipt of a GEN and no higher, and that your separation was in accordance with all Department of the Navy directives and policy at the time of your discharge. Even in light of the Wilkie Memo and reviewing the record holistically, the Board still concluded in sufficient evidence of an error or injustice exists to 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,

8/15/2022

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Executive Director

Signed by: █