



**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: 4725-22

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 reconsideration application on 15 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).

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 2 July 2003. Your pre-enlistment physical examination, on 20 September 2002, and self-reported medical history noted no neurologic or psychiatric conditions or symptoms. Your service record indicates that, on 10 December 2003, you were disenrolled from your █ due to a demonstrated lack of performance.

On 7 October 2004, you received non-judicial punishment (NJP) for failing to obey a lawful order. You did not appeal your NJP. On 3 August 2005, you received NJP for both

unauthorized absence (UA) and insubordinate conduct. You did not appeal your second NJP.

On 3 August 2005, your command issued you a "Page 13" counseling warning (Page 13) documenting your second NJP. The Page 13 expressly warned you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for an administrative separation. You did not submit a Page 13 rebuttal statement.

On 29 September 2006, you received NJP for UA, insubordinate conduct, and violation of a lawful order. You did not appeal your third NJP.

On 6 November 2006, you were notified of administrative separation proceedings by reason of misconduct due to a pattern of misconduct. You were processed using "notification procedures," which meant that you were not entitled to request an administrative separation board, but the least favorable discharge characterization you could receive was General (Under Honorable Conditions) (GEN). You expressly waived in writing your rights to consult with counsel, submit written rebuttal statements, and to request General Courts-Martial Convening Authority review of your separation. Ultimately, you were discharged from the Navy for a pattern of misconduct with a GEN characterization of service 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) your RE-4 code was wrongfully issued without constructive investigation nor proper justice, (b) you did not receive Captain's Mast (NJP), nor court-martial, nor trial, nor counseling, (c) you should be granted an upgraded reentry code because it has always been your dream to again serve your country, or even an upgrade for closure, and (d) you were highly influenced by your superiors and were the only person held accountable. 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 considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Further, the Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade or change in reentry code. 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 Other Than Honorable 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 willful 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.

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The Board determined your primary contention that you did not receive any NJP or counseling to be unsupported by your record. The Board noted your service record clearly indicates that you received NJP on three separate occasions, as well as a Page 13 counseling warning prior to your command initiating separation processing. The Board also noted that it was patently clear your separation processing was based on your documented pattern of misconduct over the course of your enlistment, and was not due to any suspected personal involvement with senior personnel that NCIS purportedly questioned you about.

Additionally, 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 2.4. Navy regulations in place at the time of your discharge required a minimum trait average of 2.5 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 pattern of serious misconduct which further justified your GEN characterization of 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 or reentry code 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 or change a reentry code 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 reentry code, and the Board concluded that your pattern of serious misconduct clearly merited your receipt of an RE-4 reentry code. In the end, the Board concluded that you received the correct discharge characterization and reentry code 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. Even in light of the Wilkie Memo and reviewing the record holistically, the Board still concluded there was insufficient evidence of an error or injustice that warrants upgrading your characterization of service, 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



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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,

7/26/2022

