



**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: 4819-22

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 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 entered active duty on 22 November 2000. Your pre-enlistment physical examination, on 16 November 2000, and self-reported medical history both noted no neurologic or psychiatric conditions or symptoms.

While still in your initial training pipeline, on 26 June 2001, you received non-judicial punishment (NJP) for insubordinate conduct, two separate specifications of failing to obey a lawful order, and disorderly conduct. You did not appeal your NJP. On 26 July 2001, your command issued you a "Page 13" counseling warning (Page 13) documenting your 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 15 May 2002, your command issued you a Page 13

documenting your commanding officer's (CO) withdraw of his recommendation for your advancement to ET3 (E-4) due to your substandard performance in basic military requirements and personal behavior.

On 8 August 2002, you received NJP for insubordinate conduct and unauthorized absence (UA). You did not appeal your NJP. On 14 August 2002, your command issued you a Page 13 warning documenting your 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 13 December 2002, you failed the fall testing cycle of the physical readiness test. On 7 February 2003, your command issued you a Page 13 documenting your CO's withdraw of his recommendation for your advancement to ET3 (E-4) due to significant problems. The Page 13 noted that you had been counseled several times for UA and did not show the requisite maturity to be promoted to petty officer third class (E-4).

On 28 February 2003, you received NJP for two separate specifications of UA. You did not appeal your third NJP.

On 12 March 2003, you were notified of administrative separation proceedings by reason of misconduct due to the commission of a serious offense and misconduct due to a pattern of misconduct. You waived your rights to consult with counsel, submit a statement to the separation authority, and to request an administrative separation board. In the interim, your CO recommended to the separation authority that you receive an Other Than Honorable (OTH) conditions characterization of service. Specifically, your CO stated:

ETSA ██████████ has no potential for future naval service. The command has exhausted all resources to rehabilitate ETSA ██████████. He has been counseled by all members of his chain of command numerous times. At his latest mast, he stated that he had a problem with authority, and he didn't think he could conform to the Navy's discipline standards. He went on to prove this by getting caught violating restriction 14 times last month. ETSA ██████████ demonstrated lack of moral fiber, disrespect for all levels of authority and disregard of even the most basic military standards render him completely unfit to wear the uniform. His conduct while in the Navy has not been adequate to earn a General Discharge. I strongly recommend separation under Other Than Honorable conditions due to his pattern of misconduct.

Ultimately, on 10 April 2003, you were discharged from the Navy for misconduct with an OTH 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 post-service conduct, including your rehabilitation

support an upgrade, (b) your minor, infrequent, and nonviolent actions occurring nearly two decades ago do not preclude relief, (c) the principles and broad list of factors in the Wilkie Memo overwhelmingly favor relief, (d) over the last two decades the military's views concerning rehabilitation and second chances have evolved considerably, and (e) your misconduct which occurred nearly two decades ago was not severe enough to prevent a discharge upgrade here. For purposes of clemency consideration, the Board noted you provided advocacy letters 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 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, change in reentry code, or other conforming changes to your DD Form 214. 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 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 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.

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 calculated from your available performance evaluations in conduct (proper military behavior) during your enlistment was 1.0. Navy regulations in place at the time of your discharge required a minimum trait average of 2.5 in conduct 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 OTH 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 serious misconduct clearly merited your receipt of an OTH. In the end, the Board concluded that you received the correct discharge characterization, narrative reason for separation, separation code, 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. The Board carefully considered all

matters submitted regarding your character, post-service conduct, and personal/professional accomplishments, however, even in light of the Wilkie Memo and reviewing the record holistically, the Board still concluded there is insufficient evidence of an error or injustice that warrants upgrading your characterization of service, changing your narrative reason for separation, modifying 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 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

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Executive Director

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