



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: 5006-22
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 reconsideration application on 14 October 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 U.S. Navy and commenced active duty on 6 December 1988. Your pre-enlistment physical examination, on 13 May 1988, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms.

On 30 May 1989, your command issued you a "Page 13" counseling warning (Page 13) documenting your failure of the physical readiness test. The Page 13 noted that you were

assigned to the remedial exercise program until you could satisfactorily achieve the minimum physical readiness standards.

On 12 May 1991, your command withdrew its advancement recommendation due to your falsification of an official document and making false statements. On 3 September, 17 September, and 29 October 1991 your command issued you written counseling sheets documenting deficiencies in your performance, responsibilities, personal behavior, and/or your substandard dress/appearance. On 15 November 1991, you received non-judicial punishment (NJP) for two separate specifications of making a false official statement, and for unauthorized absence (UA). You did not appeal your NJP.

On 15 November 1991, you were notified of administrative separation proceedings by reason of misconduct due to the commission of a serious offense as evidenced by your NJP. You consulted with counsel and elected your right to request an administrative separation board (Adsep Board).

On 19 December 1991, an Adsep Board convened in your case. At the Adsep Board you were represented by a Navy Judge Advocate. Following the presentation of evidence and witness testimony, the Adsep Board members unanimously determined that the preponderance of the evidence presented proved you were guilty of the commission of a serious offense. Subsequent to the misconduct finding, the Adsep Board members unanimously recommended that you be separated from the Navy with a General (Under Honorable Conditions) (GEN) characterization of service. In the interim, your separation physical examination, on 14 February 1992, noted no neurologic issues, conditions, or symptoms. Ultimately, on 20 February 1992 you were separated from the Navy for misconduct with a GEN discharge characterization 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 your sole contention that you were really discharged due to your sexual orientation and the "don't ask don't tell" (DADT) policy at the time of your discharge instead of misconduct.

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. First and foremost, the Board disagreed with your primary contention that you were separated due to your sexual orientation and/or any related homosexual conduct/statements. The Board determined your service records reflected various disciplinary issues and infractions including one NJP, none of which involved homosexual conduct, behavior, or any statements/admissions.

Further, 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 Other Than Honorable (OTH) or GEN 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 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 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. Finally, 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. As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your misconduct clearly merited your receipt of a GEN, and that such discharge was in accordance with all Department of the Navy directives and policy at the time of your discharge. The Board carefully considered any 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 that insufficient evidence of an error or injustice exists to warrant 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,

10/18/2022

