



**DEPARTMENT OF THE NAVY**  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

█  
Docket No: 5139-22  
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 26 September 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 Kurta Memo and 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 began a period of active duty on 24 August 1989. On 5 November 1990, you received your first nonjudicial punishment (NJP) for unauthorized absences (UA) from your appointed place of duty, three specifications of disobeying a lawful order, and dereliction of duty. You were also issued an administrative counseling documenting the deficiencies in your performance and/or conduct and advising you that further deficiencies may result in disciplinary action and in processing for administrative discharge.

On 15 December 1990, you received a second NJP for sleeping on post followed by a third NJP on 19 February 1991, for five (5) specifications of UA, three specifications of disrespect, and two specifications of disobeying a lawful order. As a result, on 21 February 1991, you were notified of your pending administrative separation by reason of misconduct as evidenced by a pattern of

misconduct (POM) and commission of a serious offense (COSO), at which time you waived your right to consult with military counsel and present your case before an administrative discharge board. In February 1991, your commanding officer recommended your administrative discharge to the separation authority (SA). On 26 February 1991, the SA directed you be discharged with an Other Than Honorable (OTH) characterization of service by reason of POM. While pending separation, you received a fourth NJP, on 25 March 1991, for two specifications of UA, disrespect, and dereliction of duties. On 7 June 1991, you were discharged with an OTH by reason of POM.

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 desire to upgrade your discharge and change your narrative reason for separation. In addition the Board considered your arguments that: (1) the circumstances of the incidents and your supporting documentation support an upgrade of your characterization of service, (2) you served honorably for two years prior to your discharge, (3) you were an outstanding member and valuable asset of the United States Navy with unlimited potential, (4) you were said to have committed two acts of misconduct, disobeying a lawful order and sleeping while on duty, and believe these acts were not sufficient for a discharge because the true reason for your discharge was your sexual orientation, (5) you were performing your duties with exemplary remarks since entering the Navy, (6) although your misconduct was found to be in violation of the Uniform Code of Military Justice (UCMJ) regulations, the misconduct should not be enough to prevent you from obtaining an honorable discharge, (7) if you were provided with the opportunity you would have continued to serve honorably, (8) your discharge took place over a decade ago and it is an injustice to continue to characterize and punish you for this discharge, especially considering the circumstances surrounding your OTH, (9) you have received full punishment, both by society and the U.S. Navy, through your NJP and separation, (10) you have repaid your debts to society by fulfilling the terms of your NJP for your misconduct, (11) to this day, you are still living with the consequences of your command's actions, (12) you have demonstrated your ability to overcome your command's actions and move forward in a positive light and take full responsibility for your actions. However, the misconduct alleged does not illustrate the caliber of sailor or man you were or have become, (13) you want to continue to improve yourself and advance in your currently job, (14) you have confessed your disposition and given the opportunity, would have continued to serve honorably, (15) although you are still serving your country the best way possible, you have goals to advance and exceed at your job but are unable to do so because of your undesirable discharge, (16) you love your country and the United States Navy and wish to remain close to the U.S. Navy and veterans who have served. It is this same respect, motivation, and devotion that drives your request as you wish to be counted among the U.S. Navy's honorably discharged member, which you consider to be an enormous part of your life, (17) there is absolutely no prejudice to the government allowing you to be reevaluated and reconsidered by this Board, (18) in the interest of justice, it seems that such a request for reconsideration is appropriate and warranted, and (19) you were not given a proper opportunity to mitigate your disposition and instead you were administratively separated. For purposes of clemency consideration, the Board noted provided supporting documentation describing post-service accomplishments but no 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 four 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. The Board noted that you were warned about the consequences of your behavior but you continued to do so despite the counseling. In particular, the Board found your continued misconduct after you were notified of administrative separation processing to be troubling and indicative of your disregard for military authority. In your commanding officer's recommendation for your separation, he stated, "Further counseling, leadership, or disciplinary action taken in this man's case with a view to retain him on active duty would be fruitless. He exhibits no potential for further naval service." In the Board's opinion, this confirms that the Navy provided you with every opportunity to remain in the Navy but you chose to continue to commit misconduct. The Board concluded your misconduct was intentional and supports the basis for your separation. Additionally, the Board considered your contention that you were targeted and discharged based on your sexual orientation. The Board found no evidence to substantiate this allegation but further noted that under Department of Navy policy for review of "don't ask, don't tell" (DADT) cases, in order to qualify for relief, the original discharge must be based solely on DADT, or a similar policy in place prior to enactment of it, and there must be no aggravating factors in the record, such as misconduct. In your case, the Board found that you were discharged based on misconduct and your extensive record of misconduct qualifies as aggravating factors. Therefore, the Board found no basis to grant you relief under the policy. Finally, the Board disagreed with your assessment that you are somehow being punished for your characterization of service and it amounts to a debt to society similar to a criminal conviction. Rather, the Board found that your characterization of service accurately portrays the totality of your active duty service that encompassed less than two years and resulted in four NJPs involving countless incidents of disrespect and orders violations. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization. While the Board commends you post-discharge accomplishments, after applying liberal consideration, the Board did not find evidence of an error or injustice that 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,

10/14/2022

