



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: 5788-22
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 19 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).

You enlisted in the Navy and began a period of active service on 4 November 2004. On 22 June 2006, you received non-judicial punishment (NJP) for drunken or reckless operation of a vehicle. On 29 June 2006, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to the commission of a serious offense, at which point, you waived your right to consult with counsel, and a hearing before an administrative discharge board (ADB). On 24 July 2006, your commanding officer recommended your discharge from naval service, with an Other Than Honorable (OTH) character of service. On 10 August 2006, the separation authority approved the recommendation and directed your separation. You were subsequently discharged on 23 October 2006.

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 request for your separation documents to reflect an Honorable character of service as per provision of 38 Code of Federal Regulations. You provided correspondence from the Department of Veterans Affairs (VA) for the Board reflecting

their decision to designate your Navy service as under honorable conditions for the purpose of determining eligibility for VA benefits. 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 NJP, outweighed these mitigating factors. In making their finding, the Board considered the VA determination you provided but concluded decisions reached by the VA to determine if former service members rate certain VA benefits do not affect previous discharge decisions made by the Navy. The criteria used by the VA in determining whether a former service member is eligible for benefits are different than those used by the Navy when determining a member's discharge characterization. Based on these factors, the Board determined you provided insufficient evidence to change your assigned characterization of service. 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. 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,

9/9/2022

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Executive Director

Signed by: █