



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: 6581-22
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 2 December 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 to 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 the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Navy and began a period of active duty on 30 October 2006. You served for approximately a year and a half without incident prior to your first nonjudicial punishment (NJP) for violations of Article 86, leaving your place of duty without authority, and Article 92, failure to obey a lawful order or regulation. Although your punishment included reduction, this action was suspended to permit you to retain your rank provided you did not commit misconduct prior to the expiration of the period of suspension. However, your suspended reduction was vacated and you received a second NJP the following month for violation of Article 91 due to insubordinate conduct toward a petty officer.

Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Your Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that you were separated from the Navy on 11 July 2008 with an Other Than Honorable (OTH) characterization of service, your narrative reason for separation is "Pattern of Misconduct," your separation code is "HKA," and your reenlistment code is "RE-4."

On 13 July 2010, the Naval Discharge Review Board (NDRB) considered your request for an upgraded character of service based on your contentions that you were treated unfairly by your command, harassed at work, and punished for petty infractions. The NDRB denied your request after concluding your discharge was proper as issued.

You subsequently applied to this Board regarding similar contentions of unfair treatment, specifying that you were subject to racial slurs and a hostile work environment. You additionally asserted that the evidence of your contended misconduct was false, that you had been denied review at least three times previously, and that your pattern of misconduct resulted from a conflict with your leadership due to their mistreatment of you based on your race. Your request was again denied on 10 June 2022.

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 your contentions that your discharge was unfair because you were singled out, subjected to hazing, and called racial slurs by members of your squadron during a period of time when there was no equity for race, leaving you subject to the injustices dealt "by white men of power." The Board also noted that you also express a belief that someone at the Board is "spiritually blocking" you from having a good life. For purposes of clemency and equity consideration, the Board noted you submitted evidence of post-discharge character for consideration of clemency, to include education transcripts, training certificates, certification as a licensed massage therapist, and a character letter from a student-peer attesting to your professionalism and knowledge of your profession.

After thorough 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 found no supporting evidence to substantiate your contentions and noted that you voluntarily elected to waive your right to an administrative hearing at which you might have raised such allegations of wrong and contested the basis for the recommendation that you be separated under OTH conditions. To the extent that you submitted evidence of a scheduled medical appointment with the Department of Veteran's Affairs, the Board observed that you have not, to date, contended that your in-service misconduct might have been attributable to a mental health condition. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service

member and continues to warrant an OTH characterization. While the Board commends you for your post-discharge good character and accomplishments, even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting an upgraded characterization of service as a matter of clemency or equity. 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 the 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 is attached 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,

12/22/2022

