



**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. 6590-22  
Ref: Signature Date

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Dear █

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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 18 November 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 this 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 10 U.S.C. § 654 (Repeal), the 20 September 2011 Under Secretary of Defense Memo (Correction of Military Records Following Repeal of Section 654 of Title 10 United States Code), 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 service on 31 July 1974. On 20 March 1975,<sup>1</sup> you were notified of proposed administrative discharge processing by reason of misconduct due to fraudulent enlistment for concealing pre-service drug usage and homosexual proclivity and or acts. This notification was based on the Naval Investigative Services (NIS) investigation that concluded on 6 March 1975. You consulted with counsel and initially requested an administrative discharge board (ADB). Subsequently, you agreed to waive the ADB on the condition that you receive a General (Under Honorable Conditions) (GEN) discharge. On 27 March 1975, your commanding officer recommended a GEN discharge. On 28 March 1975, you were discharged with a GEN discharge by reason of misconduct – fraudulent enlistment.

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<sup>1</sup> Documents in your service record are administratively incorrect as they were dated as 1974 vice 1975.

The Board noted that you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB reviewed your case on 8 July 1977 based on your request. Specifically, you requested that you would “[l]ike discharge upgraded because security check found I was living with admitted homosexual - what not known was living with wife - gave homosexual a place to live, father kicked him out, he had no job, no place to stay. Some of the other things said came from this but were not true - "I let it happen.” The NDRB noted that after careful review of all available records revealed no indication of injustice, inequity, or error in administration of the discharge, and concluded that your discharge was proper as issued.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the 20 September 2011 Under Secretary of Defense Memo (Correction of Military Records Following Repeal of Section 654 of Title 10 United States Code)<sup>2</sup> and Wilkie Memo. These included, but were not limited to, your desire to change your discharge character of service to Honorable and contention that you are requesting an upgrade “because its ok to be gay in the military now.” For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. First, the Board found that your discharge was not solely related to homosexuality since your fraudulent enlistment included your failure to disclose your drug abuse. The Board noted your admission of pre-service drug abuse to law enforcement and thus concluded that you are not eligible to receive the benefits of the 20 September 2011 Under Secretary of Defense Memo (Correction of Military Records Following Repeal of Section 654 of Title 10 United States Code). Second, the Board determined your failure to disclose your preservice drug use supported your administrative separation for fraudulent enlistment. The Board considered the likely negative effect your conduct had on the good order and discipline of your command. Therefore, in the absence of any supporting documentation that would support an argument of error or injustice, the Board concluded your significant negative aspects of your active duty service outweighed the positive aspects and continues to warrant a GEN characterization. In making this finding, the Board considered the brevity of your active duty service and weighed it against the severity of your misconduct. Therefore, 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 submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not

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<sup>2</sup> 10 U.S.C. § 654 (Repeal) and the 20 September 2011 Under Secretary of Defense Memo (Correction of Military Records Following Repeal of Section 654 of Title 10 United States Code) set forth the Department of the Navy's current policies, standards, and procedures for correction of military records following the “don’t ask, don’t tell” (DADT) repeal of 10 U.S.C. 654. It provides service Discharge Review Boards with the guidance to grant requests to change the characterization of service to “honorable,” narrative reason for discharge to “secretarial authority,” SPD code to “JFF,” and reentry code to “RE-1J,” when the original discharge was based solely on DADT or a similar policy in place prior to enactment of it and there are no aggravating factors in the record, such as misconduct.

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,

1/11/2023

[REDACTED]

Executive Director

Signed by: [REDACTED]