



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

Docket No: 6799-22

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 31 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 Under Secretary of Defense Memorandum of 20 September 2011 (Repeal of 10 U.S.C. 654 (DADT)) and 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 U.S. Navy and, on 22 July 1997, commenced a period of active duty. On 7 January 1998, you received your first nonjudicial punishment (NJP) for wrongfully consuming alcoholic beverages while in a duty status and leaving the naval training center compound in a duty status. On 29 January 1998, you received a second NJP for violating or failing to obey a lawful general order or regulation. You were subsequently issued administrative counseling documenting the aforementioned infraction yet retaining you in the naval service. This counseling also advised you that further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative separation under Other Than Honorable (OTH) conditions. On 10 February 1998, you received a third NJP for a period of unauthorized absence totaling 19 days.

On 19 February 1998, you were notified of your pending administrative separation by reason of pattern of misconduct (POM) and commission of a serious offense (COSO). You waived your right to consult with military counsel and have your case heard before an administrative discharge board. On 26 February 1998, you were offered and declined rehabilitation treatment. On 2 March 1998, your commanding officer recommended your discharge with an OTH. On 20 March 1998, the separation authority approved the recommendation and directed your separation. Subsequently, on 26 March 1998, you received a fourth NJP for an additional period of UA, wrongfully drinking while on Class 1 restriction, wrongfully wearing civilian clothes while on Class 1 restriction, and breaking restriction. On 16 April 1998, you were discharged with an OTH.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the DADT repeal guidance and Wilkie Memo. These included, but were not limited to, your desire to upgrade your discharge and contentions that: (1) you did not feel you should have been discharged due to the fact of your gender affiliation and (2) your Chief/E-7 did not agree with you and targeted you. 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, Board considered whether the Under Secretary of Defense Memorandum of 20 September 2011 applied in your case. This guidance sets 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 separation 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. In your case, the Board found that policy inapplicable to you since you were discharged for misconduct and not your gender identity. Further, the Board noted aggravating factors of misconduct in your record. Finally, the Board found no evidence to support your contention that you were targeted based on your gender identity.

Second, the Board considered whether relief was warranted under the Wilkie memo. In reviewing the circumstances of your cases, 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 authorities and regulations. The Board noted that you continued to commit misconduct even after you were notified of administrative separation processing. As a result, the Board concluded your conduct constituted a significant departure from the expected of a Sailor and continues to warrant an OTH characterization. While the Board commends your post-discharge 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 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,

11/21/2022

