



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: 6998-22
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 14 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 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 United States Navy and commenced a period of active duty on 31 July 2001. On 3 June 2002, you were notified that you were being processed for an administrative discharge by reason of misconduct, commission of a serious offense. You elected your right to consult with qualified counsel and your right to present your case at an administrative separation board. The very next day, on 4 June 2002, the Navy Personnel Command (NPC) flagged your record based on allegations of "extrafamilial child sexual abuse." On 9 August 2002, after consulting with military counsel, you changed your rights elections associated with your 3 June 2002 administrative separation notice, and waived your right to present your case at an administrative board. You also acknowledged that your service could be characterized as Other than Honorable (OTH). In connection with this waiver of rights, the advising attorney issued a memo for the record, stating that you discussed your legal options in depth. On 13 August 2002, you received non-judicial punishment (NJP) for violating Uniform Code of Military Justice Article 111, driving under the influence of alcohol while on base. You were awarded a reduction in rank to E-1, restriction and extra duties, and forfeitures of pay. You did not appeal your NJP. On 9 January 1992, you were

discharged from the Navy by reason of misconduct with an OTH characterization of service and assigned an RE- 4 reentry code.

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 characterization and contention that: (a) you did not want to be discharged and would not have chosen separation but for the advice of military counsel, and (b) all charges were dropped 60 days after your separation. For purposes of clemency and equity consideration, the Board noted that you did not provide advocacy letters or documentation of post-service accomplishments.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by the NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct, and noted that your decision to drive under the influence while on base put your fellow shipmates at risk. The Board determined that such misconduct is contrary to the Navy core values and policy. As a result, the Board determined your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization.

In reference to the allegations of “extrafamilial child sexual abuse,” the Board relied on your own statement from 9 August 2002, which states “I hereby knowingly and intelligently waive my right to an administrative board.” The Board also highlighted that your detailed defense counsel issued a memorandum for the record, stating:

I have discussed the administrative board process with my client [Petitioner]. We discussed in depth matters pertaining to how the facts of his case would be considered at an administrative separation board. I have counseled [Petitioner] on the nature of an Other than Honorable discharge. [Petitioner] indicated his understanding. After carefully considering all of his options [Petitioner] has decided that waiving his administrative board is in his best interest.

The Board felt that you considered all of your options prior to your separation and elected the path most advantageous to you at the time. The Board felt that the status of the charges post-separation was irrelevant to the basis of misconduct and should not, therefore, weigh in favor of changing your characterization of service. 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 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,

11/21/2022

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Executive Director

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