



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

█
Docket No: 7189-22

Ref: Signature date

█
█
█

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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 19 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, 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 on 19 June 1991 and began a period of active duty. On 16 March 1993, you were convicted and charged by civil authorities for one count of speeding. You were sentenced to pay a \$199.75 court fine. On 7 June 1993, you were convicted and charged by civil authorities for driving while on a suspended license, and driving while under the influence. You were sentenced to a \$110.00 court cost, \$476.00 fine, probation for a period of 12 months, driving privileges suspended for a period of 6 months, DUI school training, 50 hours of community services, and alcohol evaluation counseling. On 4 May 1994, you were convicted and charged by civil authorities for driving with a suspended or revoked license. You were sentenced to pay a \$178.25 court fine. On 30 August 1994, you received nonjudicial punishment (NJP) for false pretenses, obtaining services with the intent to default, and falsely attained long distance telephone services. On 2 September 1994, you were notified of the initiation of administrative separation proceedings by reason of fraudulent entry and misconduct due to civilian conviction, commission of a serious offense, and pattern of misconduct, at which point, you decided to waive

your procedural rights. On 7 September 1994, your commanding officer recommended an Other Than Honorable (OTH) discharge characterization of service. On 26 September 1994, the separation authority approved the recommendation and ordered an OTH discharge characterization by reason of misconduct due to pattern of misconduct. On the same date, you were so discharged.

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 for a discharge upgrade and contention that you were discharged for making long distance calls. 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. Specifically, the Board determined that your misconduct, as evidenced by your NJP and civil convictions, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact it had on the good order and discipline of your unit. Additionally, the Board considered the discrediting nature of your civil misconduct and negative effect it likely had on the Navy. Finally, the Board noted the absence of any supporting evidence with your application. 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. 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,

█

Executive Director

█