



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: 7342-22
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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 14 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 the Under Secretary of Defense Memo of 20 September 2011 (Correction of Military Records Following Repeal of 10 U.S.C. 654) and 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 their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You entered active duty with the Navy on 7 August 1991. On 23 September 1991, you were counseled on being retained in the Navy in spite of your defected enlistment and induction due to fraudulent entry as evidenced by your failure to disclose your civil arrests and convictions prior to enlisting. During the period from 30 January 1992 to 12 June 1992, you received two non-judicial punishments (NJP) for wrongfully introducing and using alcohol onboard ship, larceny of government property, and wrongful possession/use of an official pass. Subsequently, you were

notified of pending administrative separation action by reason of misconduct due to commission of a serious offense. After electing to waive your rights, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge by reason of misconduct due to commission of a serious offense, with General (Under Honorable Conditions) characterization of service. The SA approved the CO's recommendation and, on 19 February 1993, 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 Under Secretary of Defense Memo of 20 September 2011 and Wilkie Memo. These included, but were not limited to your desire to upgrade your discharge and contention that you were discharged because you were a gay male struggling with your sexuality. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your two NJPs and retainable waiver, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded that your conduct showed a complete disregard for military authority and regulations. Further, the Board considered the likely negative effect your misconduct had on the good order and discipline of your command. Additionally, the board noted that there is no evidence in your record, and you submitted none, to support your contention of being discharge due to being a gay male. Regardless, even if you were discharged as a result of your sexual orientation, the Board determined you would not have qualified for relief. The Under Secretary of Defense Memo of 20 September 2011 provides service Discharge Review Boards with guidance to grant requests to upgrade characterizations of service to "Honorable," change narrative reason for discharge to "Secretarial authority," SPD code to "JFF," and reenlistment code to "RE-1J," when the original discharge was based solely on "Don't Ask, Don't Tell" 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 aggravating factors in your record that included two incidents of serious misconduct. As a result, the Board concluded the significant negative aspects of your service outweigh the positive aspects and continues to warrant a General (Under Honorable Conditions) characterization of service. Ultimately, the Board concluded you were fortunate to receive a General (Under Honorable Conditions) discharge despite the seriousness of your offenses. 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 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,

1/8/2023

[REDACTED]

Executive Director

[REDACTED]