



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

█
Docket No: 7371-22

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.

A three-member panel of the Board, sitting in executive session, considered your application on 14 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 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 entered active duty on 2 July 2019. Your pre-enlistment physical examination, on 20 May 2019, and self-reported medical history both noted no neurologic or psychiatric conditions or symptoms.

On 19 November 2019, you received non-judicial punishment (NJP) for multiple specifications of failing to obey a lawful order or regulation. You did not appeal your NJP. The same day, your command issued you a "Page 13" counseling warning (Page 13) documenting your NJP. The Page 13 expressly warned you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for an administrative separation. You did not submit a Page 13 rebuttal statement.

However, on 18 December 2019, you received NJP for two separate specifications of failing to obey a lawful order or regulation. You did not appeal your NJP.

On 9 March 2020, your command issued you a Page 13 documenting your December 2019 NJP, and your command's previous attempt to administratively separate you in mid-January 2020. However, following a General Courts-Martial Convening Authority review of your proposed separation, you were retained in the naval service. The Page 13 expressly warned you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for an administrative separation. You did not submit a Page 13 rebuttal statement.

On 21 July 2020, you received NJP for failing to obey a lawful order (underage drinking), and for drunk driving (DWI). You did not appeal your NJP. On the same day, your command issued you a Page 13 warning documenting the NJP. The Page 13 warned you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for an administrative separation. You did not submit a Page 13 rebuttal statement.

Subsequently, your command notified you of administrative separation proceedings by reason of misconduct due to the commission of a serious offense. However, on or about 24 March 2021, you commenced a period of unauthorized absence (UA). Your command declared you to be a deserter on 24 April 2021. Your UA continued for approximately 226 days until 5 November 2021. Ultimately, on 5 November 2021, you were discharged from the Navy for misconduct with an Other Than Honorable (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 for an upgrade to your reentry code and sole contention that you have come to realize your actions on active duty have an adverse impact on you as a civilian. For purposes of clemency 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. The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade, change in reentry code, or other conforming changes to your DD Form 214. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that characterization under OTH conditions is generally warranted for misconduct and is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor. The Board determined that the record clearly reflected your pattern of misconduct was intentional and willful and indicated you were unfit for further service. Moreover, the Board noted that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions.

Additionally, the Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average calculated from your available performance evaluations in

conduct (proper military behavior) during your enlistment was 1.0. Navy regulations in place at the time of your discharge required a minimum trait average of 2.5 in conduct for a fully honorable characterization of service. The Board concluded that your conduct marks during your active duty career were a direct result of your serious misconduct which further justified your OTH characterization of discharge and RE-4 reentry code.

The Board also noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge or reentry code to be automatically upgraded after a specified number of months or years. Lastly, absent a material error or injustice, the Board generally will not summarily upgrade a discharge or change a reentry code solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities, including military enlistments. As a result, the Board determined that there was no impropriety or inequity in your discharge characterization and reentry code, and the Board concluded that your serious misconduct clearly merited your receipt of an OTH and RE-4 code, and that such action was in accordance with all Department of the Navy directives and policy at the time of your discharge. Even in light of the Wilkie Memo and reviewing the record holistically, the Board still concluded that insufficient evidence of an error or injustice exists to warrant upgrading your characterization of service or granting clemency in the form of an upgraded characterization of service. 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 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,

10/27/2022

█

Executive Director

█