



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

█  
Docket No. 8125-22  
Ref: Signature Date

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Dear █

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 27 January 2023. 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 took your oath of office, commissioned as an Ensign via the Nurse Corps Officer Candidate Program, and entered active duty on 14 September 2019. Your date of rank was 4 May 2019.

In early December 2020, your command initiated a command investigation to inquire into facts and circumstances surrounding: (a) your extramarital sexual affair with the civilian husband of a fellow Navy Nurse Corps Officer, and any potential false official statements made to your command regarding such affair, and (b) any potential orders violation in connection with a command COVID-19 restriction of movement order. The Investigating Officer (IO) determined that you engaged in extramarital sexual conduct with the civilian husband of a fellow Nurse Corps Officer while she was deployed to █. Evidence obtained during the investigation indicated you engaged in such conduct on multiple occasions. The IO recommended that you receive non-judicial punishment (NJP) and be required to show cause for retention in the U.S.

Navy for your misconduct.

On or about 26 January 2021, your command charged you with violating Article 134 of the Uniform Code of Military Justice for your extramarital sexual conduct. You declined to provide a voluntary statement and elected your right to consult with counsel. On 27 January 2021, you refused NJP. With your NJP refusal, you indicated your understanding that your NJP refusal did not preclude your command from taking administrative action based on your misconduct.

In the command's Report of Misconduct (Misconduct Report), dated 29 January 2021, the commanding officer (CO) of Navy Medicine Readiness and Training Command, ██████████ recommended to Navy Personnel Command (PERS-834) that you be required to show cause for retention in the naval service. The CO also recommended that you not be detached for cause, but concluded your misconduct warranted your promotion delay and/or removal. In the Misconduct Report the CO noted:

I found that the preponderance of evidence substantiated the allegations that ██████████ ██████████ committed extramarital sexual conduct and her conduct was unbecoming of an officer. By her actions, I believe ██████████ ██████████ has shown a character not in keeping with the standards expected of a Naval officer. ██████████ ██████████ misconduct brought discredit to the U.S. Navy and is corrosive to good order and discipline if she is not held accountable.

The CO advised you in the Misconduct Report that you were given ten (10) days to submit any comments regarding such report which was going to be included as an adverse matter in your official service record.

On 1 February 2021, you acknowledged receiving a copy of the Misconduct Report and expressly understood such report would become a part of your official record. Following your review of the Misconduct Report, you elected in writing not to submit a statement. On 10 February 2021, Commander, Naval Medical Forces Atlantic concurred with the CO's recommendations that you be required to show cause for retention, that you not be detached for cause, and that your misconduct warranted promotion delay or removal.

On 5 March 2021, the Show Cause Authority (PERS-834 or SCA) initiated administrative action requiring you to show cause for retention based on your misconduct and substandard performance of duty. The SCA stated your recommended characterization was General (Under Honorable Conditions) (GEN), which was the least favorable characterization you could receive under the circumstances. The SCA notification advised you that you could, inter alia: (a) submit a rebuttal or decline to make a statement, (b) tender a qualified resignation request for a GEN characterization of service in lieu of separation processing, (c) confer with military counsel, or civilian counsel at no expense to the government, (d) had the right to submit a statement concerning the insertion of adverse material relating to the administrative separation process. The SCA notification directed you to complete and return you acknowledgment of rights within ten (10) days, and also informed you that a failure to exercise your rights or respond within the

specified time would constitute a rights waiver. On 10 March 2021, you returned your completed acknowledgment of rights form. You elected: (a) not to tender your qualified resignation request for a GEN discharge in lieu of administrative show cause proceedings at a Board of Inquiry, and (b) you specifically declined to submit a statement. In the interim, you received an adverse fitness report for the reporting period ending 31 May 2021 which rated you as “Significant Problems,” ranked you dead last of the eleven Ensigns in your summary group, and recommended you for an administrative separation.

On 15 November 2021, the Deputy Chief of Naval Personnel (CNP) recommended to the Assistant Secretary of the Navy for Manpower and Reserve Affairs (ASN(M&RA)) that you be separated for misconduct with a GEN characterization of service. In the endorsement, CNP noted:

On November 1, 2020, ██████████ ██████████ engaged in sexual intercourse with the civilian spouse of another naval officer, who she knew to be married. ██████████ ██████████ admitted to her civilian boyfriend and the civilian admitted to his wife, a naval officer, that they had sex on multiple occasions. ██████████ ██████████ was also observed visiting the residence of the civilian and officer on multiple occasions while the officer was not present.

On 18 November 2021, ASN(M&RA) approved the CNP’s recommendation. Ultimately, on 31 January 2022, you were discharged from the Navy for misconduct with a GEN characterization of service.

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 be reinstated to the Navy or alternatively have your characterization of service upgraded along with a change to your reason for separation and separation code. You contend that: (a) you were wrong and are repentant you had an extramarital affair with a naval officer’s civilian spouse, (b) the extramarital affair is not indicative of your ethics and moral compass, (c) the chain of command made a material error of procedure and a material error of discretion by discharging you with a GEN given that the Navy failed to let you submit a statement on your behalf prior to your discharge, (d) notice of the opportunity to submit written matters to the SCA prior to your discharge was never given to you, (e) as a result you were prejudiced by incorrect information you received from your legal office which you detrimentally relied upon, (f) the chain of command made a material error of discretion when they failed to use the facts and arguments presented in your response to your 5 March 2021 notification, and (g) the GEN characterization is too harsh when the totality of the circumstances are evaluated. For purposes of clemency and equity consideration, the Board considered the evidence you submitted in support of your application.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Regarding your discharge upgrade request, the Board unequivocally determined that your discharge from the Navy with a GEN characterization was warranted. The

Board determined that your substantiated misconduct clearly demonstrated you had minimal potential to contribute positively to the Navy as an officer responsible for the care and well-being of enlisted Sailors. The Board also noted that your misconduct and lack of judgment was not just an isolated incident and the record reflected you engaged in such extramarital misconduct on multiple occasions. Thus, the Board found that your GEN separation to be appropriate under the totality of the circumstances.

Further, the Board did not find your substantive and procedural due process contentions persuasive and concluded that your proffered arguments lacked merit. Based on the record, the Board noted that the SCA properly notified you, on 5 March 2021, of administrative separation processing. On such notice, you were provided certain rights, one of which was to submit a rebuttal or decline to make a statement. On 10 March 2021, you submitted your rights election form and you unequivocally elected to not submit a statement.

The Board was not persuaded by any argument that you were not provided notice of another opportunity to submit written matters prior to your discharge/separation. The Board found that you were given adequate written notice, on 5 March 2021, of your rights and you unequivocally elected not to submit any written matters for consideration. Your counsel's argument that, based on a conversation with a civilian at your base legal office in April 2021, you somehow were under the impression you were going to be provided notice *a second time* of your right to submit matters was determined to be without merit. The Board concluded that it was unreasonable to expect a second notification given that the base legal office was without any authority to informally or formally suggest and/or authorize a second "notice and respond" to take place. The Board noted that the notification form, dated 5 March 2021, originated from the SCA (PERS-834) and such form clearly listed a point of contact (██████████) with contact information. The Board determined the fact your command was listed as a "via" addressee was of no consequence. The Board concluded that your counsel should have directed any inquiries regarding your separation processing to the POC at the SCA listed on the notification, and not to your command as they were not the SCA.

The Board determined that it was not reasonable for either you or your counsel to rely on a phone conversation with a representative from a legal office with no cognizance over the matter to think a second notification was forthcoming. The Board noted a second notification with another opportunity to submit matters was never authorized or issued by the SCA and the Board determined your counsel should have known better than to assume or expect a second one was ever coming to you. Notwithstanding, the Board noted you had no less than seven full months to any tender matters for consideration prior to CNP and ASN(M&RA) taking action on your discharge. The Board determined there was nothing precluding you from contacting the SCA POC directly and working with PERS-834 to submit any proposed rebuttal submission.

Additionally, the Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade and/or to make any 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 Other Than Honorable (OTH) conditions or GEN 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 commissioned officer. The Board also determined that the record clearly reflected your repeated misconduct was deliberate and willful and indicated you were unfit for further service. Moreover, the Board noted that the evidence of record did not demonstrate you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions.

The Board also noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. Further, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your misconduct clearly merited your receipt of a GEN characterization of service and no higher. In the end, the Board concluded that you were properly discharged, received the correct discharge characterization and narrative reason for separation based on the totality of your circumstances, and that such action was in accordance with all Department of the Navy directives and policy at the time of your discharge. While the Board carefully considered the evidence you submitted in mitigation, 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 granting you the relief you requested or granting relief as a matter of clemency or equity. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. 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,

2/2/2023

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Executive Director  
Signed by: █