



result in disciplinary action and in processing for an administrative separation. You did not submit a Page 13 rebuttal statement.

On 20 June 1995, you were convicted at a Special Court-Martial (SPCM) of insubordinate conduct, provoking speech/gestures, simple assault, and communicating a threat. You were sentenced to a reduction in rank to the lowest enlisted paygrade (E-1), forfeitures of pay, and confinement for 100 days. On 25 September 1985, the Convening Authority approved the SPCM sentence as adjudged, but suspended any confinement in excess of seventy (70) days.

On 22 June 1995, your command notified you of administrative separation proceedings by reason of misconduct due to the commission of a serious offense. You consulted with counsel and waived your rights to submit a statement to the separation authority, and to request an administrative separation board. Ultimately, on 28 November 1995, you were discharged from the Navy for misconduct with an Other Than Honorable (OTH) characterization of service and assigned an RE-4 reentry code.

On 14 May 2004, the Naval Discharge Review Board denied your application for relief.

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 contentions that: (a) you received ineffective assistance of counsel (IAC), (b) your squadron did not handle your situation correctly and if you were never placed in restriction the situation would have never happened, (c) you were railroaded and all the evidence points to the wrong doers, and (d) you eventually ended up serving in the Army National Guard for both ██████████ and ██████████ respectively. For purposes of clemency and equity consideration, the Board noted you provided discharged documents from your service with the Army National Guard.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. The Board determined that no IAC occurred. The Board noted there is no convincing evidence in the record to support your contention that you did not receive adequate representation or experienced IAC. The Board unequivocally concluded that you failed to meet your burden to show that: (a) your defense counsel's performance was deficient and fell below an objective standard of reasonableness, and (b) that there was a reasonable probability of a more favorable result had your alleged deficiencies actually occurred. Accordingly, the Board determined insufficient evidence exists to show IAC occurred in your case.

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 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.

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. 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 that such action was in accordance with all Department of the Navy directives and policy at the time of your discharge. The Board carefully considered any matters submitted regarding your character, post-service conduct, and personal/professional accomplishments, however, 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 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,

12/16/2022

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