



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

█  
Docket No: 8308-22  
Ref: Signature Date



Dear Petitioner:

This is in reference to your application for correction of your husband's naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your husband's 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 23 November 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 husband's 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).

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.

Your husband enlisted in the Navy and began a period of active duty on 4 June 2008. He received non-judicial punishment (NJP) on three occasions for the following charges: reckless operation of a vehicle, fleeing the scene of an accident, failure to obey an order, damage of United States property, and communicating a threat. On 2 February 2010, he was notified of the initiation of administrative separation proceedings by reason of pattern of misconduct, at which point he waived his right to consult with counsel. The separation authority approved and directed his separation with a General (Under Honorable Conditions) character of service by

reason of misconduct due to pattern of misconduct. On 25 February 2010, he was discharge as directed.

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 your husband's character of service to be upgraded so that you are able to receive a veterans' flag and his medals. 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 husband's misconduct, as evidenced by his NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of his misconduct and weighed it against the positive aspects of his active duty service. Ultimately, the Board concluded significantly negative aspects of his active duty service outweighed the positive aspects and continue to warrant a General (Under Honorable Conditions) characterization. While the Board considered that you would like your husband's flag and medals, 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 his 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.

The Board wanted to pass on their condolences for your loss and inform you that requests for replacement medals and other benefits should be submitted to the agency that determines your eligibility for veteran's benefits such as your local, state, Department of Veterans Affairs offices.

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,

12/27/2022

