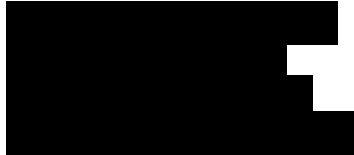




DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

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Docket No. 8414-22

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 30 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 this 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).

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 enlisted in the United States Navy and commenced your initial period of service on 6 May 2004. On 27 February 2020, you were found guilty at non-judicial punishment (NJP) for violating Uniform Code of Military Justice (UCMJ) Article 80 (Attempts), Article 92 (3 specifications: Failure to obey order or regulation), and Article 134 (2 specifications: Indecent Conduct). Specifically, you fraternized with an airman in your direct chain of command, to include frequent texting, the exchange of sexual photographs, and sending a video of a sexual nature. You also invited the subordinate to your home, where you proceeded to attempt intercourse with her, only terminating the sexual interaction when she withdrew consent. You admitted to all of the charges and specifications thereunder. You did not appeal this NJP.

On 8 April 2020, as a result of your misconduct, your command informed you that you were being processed for administrative separation by reason of commission of a serious offense (COSO). You elected your right to representation by qualified counsel and to present your case at an administrative separation (ADSEP) board. On 21 July 2020, by a vote of 3 to 0, the ADSEP board found that the sole basis for separation was not met. Although you again admitted guilt to the underlying misconduct while under oath, your counsel made an argument that your conduct did not warrant a punitive discharge per the language of MILPERSMAN 1910-142 and the ADSEP board concurred.

Following the ADSEP board, your command recommended your administrative separation to Commander, Navy Personnel Command (CNPC) (PERS 832). On 15 January 2021, CNPC directed notification procedures for your administrative separation under MILPERSMAN 1910-164, for the best interest of the service (BIOTS). You were notified on 19 January 2021, and again on 8 February 2021, which included an addendum that specifically cited the misconduct which formed the basis for BIOTS separation. Ultimately, the Secretary of the Navy directed your discharge from the service, on 25 August 2021, by reason of pattern of BIOTS with a General (Under Honorable Conditions) characterization of service and assigned an RE- 4 reenlistment 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 to have your administrative separation set aside, to be restored to active duty, and to remove any reference to your discharge. You contend the Navy committed material error by discharging you for the same misconduct for which the ADSEP board retained you. Additionally, you assert that you were experiencing stressful events in your life that caused you to self-medicate through alcohol use and argue the impact of your mental health had on your conduct. 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. In your petition, you argue that compounding material errors demand relief. First, you argue that because the ADSEP Board found no basis under MILPERSMAN 1910-142 (COSO), the Separation Authority contravened the due process protections established in MILPERSMAN 1910-220 by subsequently processing under BIOTS. The Board disagreed with this analysis, as the provision for Separation by Reason of Best Interest of the Service (BIOTS) in MILPERSMAN 1910-164 is distinct from misconduct-based separation, as you acknowledge in your request for relief. Although BIOTS does not afford the opportunity to elect an ADSEP board, due process is maintained by routing the separation request via Commander, Navy Personnel Command, to the Assistant Secretary of the Navy (Manpower and Reserve Affairs) (ASN (M&RA)) for review and approval/disapproval in accordance with MILPERSMAN 1910-164. Both you and your attorney exercised your due process rights by submitting statements for consideration on 3 February 2021. The same arguments in this request for relief were relayed to ASN (M&RA), wherein you state that “[r]eprocessing AMC Delorme under BIOTS separation procedures contradicts our regulations' demand for finality after a finding of no basis.” ASN (M&RA) disagreed with this assertion and directed administrative separation under BIOTS. The Secretary of the Navy (SECNAV) has plenary authority to direct a BIOTS separation of any

member prior to the member's expiration of active service, after determining such separation is in the BIOTS. This plenary authority is a power that is wide-ranging, broadly construed, and in cases such as this, allows the SECNAV to determine when a service member's separation would be in the best interest of the service. Although BIOTS processing normally should not be used when there is a more appropriate basis for processing, such as misconduct or unsatisfactory performance, it is SECNAV's plenary authority to determine when a case involving misconduct should result in separation under BIOTS. The Board concluded that in your case, the command acquired prior approval from CNPC prior to initiating BIOTS procedures and that you were afforded due process as required by governing regulations. As such, the Board did not find error or injustice warranting relief under this argument.

In your second argument, you contend that you received improper notice for the basis of BIOTS. Specifically, you state that "at no point did the Convening Authority, Separation Authority, or any intermediate commander even claim that Petitioner's separation was in the Navy's best interest. This despite multiple opportunities to do so." The Board disagreed with your assertion that you received insufficient notice as to why your separation was in the best interest of the service due to your misconduct. The Board concluded that both of the ADSEP notices (dated 19 June 2021 and 8 February 2021) provided you sufficient notice that your misconduct, as charged at NJP and subsequent ADSEP board, formed the basis for separation under BIOTS. The Board highlighted that even if the actual notice documents were defective, you went through the entire administrative separation board process, where you heard firsthand, the negative impact that your misconduct had on good order and discipline. You admitted, under oath, that you committed the misconduct and acknowledged the negative impact. You admit that "I broke a trust." The Board also highlighted that your command did, in fact, "claim that Petitioner's separation was in the Navy's best interest," in their recommendation for separation VAQ 129 ltr 1910 SerNOO/323 dtd 3 Sep 20. Specifically, Commanding Officer, █, states "[i]n the entirety of my experience I have not dealt with a more egregious breach of trust than a Chief Petty Officer preying on an Airman under his charge and in such a reprehensible manner. Thus, I believe it to be an immutable truth that [Petitioner] committed multiple serious offenses.... I cannot in good conscience send [Petitioner] to another command to once again be placed in a position of trust and leadership over junior Sailors." The recommendation also included a recitation of the underlying misconduct that formed the basis for your discharge. Both you and your attorney had an opportunity to review and rebut this recommendation, and did in fact do so in your letters to ASN (M&RA) dated 3 February 2021. The Board concluded that you had extensive notice of the "circumstances and acts" that formed the basis of your separation and why your separation is in the "best interest of naval service." Therefore, the Board was not persuaded by your arguments on this issue.

Ultimately, the Board determined that your misconduct was contrary to the Navy core values and policy and irreparably broke the trust that the Navy places in its leaders. The Board found that your misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also determined that the evidence of record demonstrated that you were mentally responsible for your conduct and that you should be held accountable for your actions. The Board also considered the seriousness of your misconduct and the negative impact your conduct had on the good order and discipline of your command. Based on these factors, the Board determined your conduct constituted a significant departure from that expected of a Sailor and

continues to warrant your separation from the service. 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,

2/12/2023

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Executive Director

Signed by: █