

DEPARTMENT OF THE NAVY

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

> Docket No. 8543-22 Ref: Signature Date



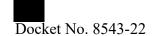
Dear Petitioner:

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.

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 25 January 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).

After a period of honorable service, you reenlisted in the Navy on 23 June 1992. During the period from 1 June 1990 to 4 December 1990, you were in an UA status on three separate occasions totaling three days, one hour and 30 minutes. On 3 June 1993, civil authorities charged and convicted you of felony hit and run and driving under the influence of alcohol. You were sentenced to confinement for five years, which was suspended. Subsequently, you were notified of pending administrative separation action by reason of misconduct due to commission of a serious offense. You waived your rights and your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge by reason of misconduct due to commission of a serious offense, with an Other Than Honorable (OTH) characterization of service. The SA approved the recommendation and, on 1 October 1993, you were so discharged.

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 upgrade your discharge and contentions that you made a mistake at a young age, you need veterans' benefits, and you became a better man and a father of two children. For purposes of clemency and equity consideration, the Board noted you



provided advocacy letters but failed to provide supporting documentation describing post-service accomplishments.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your civil conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely discrediting effect your conviction had on the Navy. Further, the Board noted that the evidence of record did not show that you were not responsible for your conduct or that you should not be held accountable for your actions. The Board also felt that your record clearly reflected your willful misconduct and demonstrated you were unfit for further service. Finally, 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 concluded your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization. While the Board commends your post-service good character and accomplishments, 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.

