



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

██████████  
Docket No. 8780-22  
Ref: Signature Date

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████████████████████

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 4 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 enlisted in the Navy and entered active duty on 19 February 2002. The following day, you were counseled regarding your retention in the Navy despite your failure to disclose your civil charge of the commission of mischief. You served without incident until you received non-judicial punishment (NJP), on 14 August 2003, for disrespect toward a superior commissioned officer, and commission of an indecent act. On 1 September 2003, you were counseled for your failure to provide adequate support for your family members. Subsequently, you began a period of unauthorized absence (UA) starting 3 May 2004 until your apprehension on 17 June 2004. On 17 June 2004, you received NJP for the aforementioned period of UA, and uttering a worthless check by failing to maintain funds. As a result of your misconduct, administrative separation proceedings were initiated.

Unfortunately, some of the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial

evidence to the contrary, will presume that they have properly discharged their official duties. Your Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that you were separated from the Navy on 6 August 2004 with an Other Than Honorable (OTH) characterization of service, your narrative reason for separation is "Misconduct," your separation code is "HKQ," and your reenlistment code is "RE-4." Your separation code indicates you were discharged for commission of a serious offense.

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 characterization of service and contentions that you regret your misconduct, your OTH character of service was due to bad checks written by your ex-wife, you were a rebel and did not value the institution of your service, and you reported your unit for negligence and were discharge. For purposes of clemency and equity consideration, the Board noted you provided advocacy letters describing post-service accomplishments and good character.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your counseling statements and NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. The Board also considered the likely negative impact your conduct had on the good order and discipline of your unit. Further, the Board took into consideration that you were warned regarding the consequences of continued misconduct but continued to do so. 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-discharge accomplishments and good character, 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,

1/26/2023

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Executive Director  
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