



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

█  
Docket No. 8898-22

Ref: Signature Date

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Dear █:

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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 13 February 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).

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 Navy and began a period of active duty on 4 November 1993. On 10 March 1994, you received your first nonjudicial punishment (NJP) for unauthorized absence (UA). From May to June 1994, you received administrative counseling regarding multiple infractions to include gear adrift and tardiness. On 26 November 1994, you received a second NJP for UA from your appointed place of duty and failure to obey a lawful order. On 3 February 1995, you received a third NJP for dereliction in the performance of duties and false official statement. On this date, you were also notified of your pending administrative separation by reason of commission of a serious offense (COSO) and pattern of misconduct (POM), at which time you

elected your right to consult with military counsel and to have your case heard before an administrative discharge board (ADB).

On 18 April 1995, the ADB found, by a vote of 3 to 0 that you committed misconduct and recommended you be discharged with a General (Under Honorable Conditions) (GEN) characterization of service. On 7 June 1995, your CO requested your discharge be held in abeyance due to your additional misconduct. This aforementioned misconduct resulted in your fourth NJP for failure to obey a lawful order and making a false official statement. On 9 June 1995, your CO reported this NJP to the separation authority (SA) and notified the SA of his intent to reprocess you for an Other Than Honorable (OTH) characterization of service.

On 12 June 1995, you were reprocessed for administrative separation by reason of COSO and POM, at which time you waived your right to consult with military counsel and to have your case heard before an ADB. Your CO recommended to the SA that you be discharged with an OTH. On 11 July 1995, the SA accepted the recommendation and directed your discharge. On 19 July 1995, 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 characterization of service and your contention that you were given an OTH “due to being a whistleblower due to an officer helping me during the situation and not getting into trouble but I took the fall for him.” 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 misconduct, as evidenced by your four NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that you continued to commit misconduct even after you were processed for administrative separation. The Board concluded you were given multiple opportunities to correct your conduct deficiencies and your conduct likely had a negative effect of the good order and discipline of your command. Further, the Board noted you provided no evidence to substantiate your contentions. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH. 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. 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 the 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,

2/28/2023

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Executive Director

Signed by: █