



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: 9068-22
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 22 December 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).

You enlisted in the U.S. Navy and began a period of active duty on 24 May 1993. On 11 November 1993, you were arrested by █ police for larceny, obstructing performance of official duty, inflicting bodily injury and a road traffic law of █. After a criminal trial, you were found guilty, on 23 February 1994, for larceny, obstructing performance of official duty, inflicting bodily harm and a road traffic law of █. You were sentenced to one year and four months of forced labor.

As a result, you were notified for separation for Misconduct, Civilian Conviction and Misconduct, Commission of a Serious Offense. You consulted with counsel and waived your right to an Administrative Board. On 14 November 1994, your Commanding Officer recommended to the Separation Authority (SA) your discharge with an Other Than Honorable (OTH) characterization of service. The SA accepted the recommendation and directed your be

discharge. Subsequently, you were discharged on 14 December 1994 with an OTH due to 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 contention that your discharge was an injustice because your drink was spiked with an unknown substance that caused you not to remember the details surrounding the incident that formed the basis for your civilian conviction. 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 civilian conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the discrediting effect your conduct had on the Navy and United States. Finally, the Board noted that you provided no evidence, other than your statement, to substantiate your contentions. The Board also considered that you were afforded all the required due process during your civil trial, to include representation by legal counsel. 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 carefully considered your arguments 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 upgrading your 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.

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,

1/17/2023

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