



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

█
Docket No. 9165-22
Ref: Signature Date



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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 11 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 20 September 2011 Don't Ask Don't Tell (DADT) 10 U.S.C. 654 (Repeal) Under Secretary of Defense Correction of military records following Repeal of U.S.C. 654 and 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 January 1983. Upon entry into the service you revealed your illegal use of a controlled substance while in the Delayed Entry-Program. After review, a waiver was not needed. On 30 March 1984, you received non-judicial punishment for wrongful use of a controlled substance. You were subsequently issued a counseling warning, on 10 April 1984, for poor attitude and noncompliance with Navy standards in grooming and appearance, continual tardiness and inconsistent pattern of performance. Subsequently, you were notified for separation for Unsatisfactory Performance. You waived your right to consult with counsel and acknowledged your rights.

Unfortunately, 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 25 May 1984 with a General (Under Honorable Conditions) characterization of service, your narrative reason for separation is "Misconduct, Minor Disciplinary Infractions," your separation code is "JKN," and your reenlistment code is "RE-4."

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 and DADT repeal policy guidance. These included, but were not limited to, your desire for an upgrade in your characterization of service due to the repeal of DADT. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

First, the Board determined that you do not meet the eligibility guidelines for relief under the DADT repeal policy. The current policy for correction of military records following the "don't ask, don't tell" (DADT) repeal of 10 U.S.C. 654 provides service Discharge Review Boards with the guidance to grant requests to change the characterization of service to "Honorable" when the original discharge was based solely on DADT or a similar policy in place prior to enactment of it and there are no aggravating factors in the record, such as misconduct. In your case, the Board determined you were not discharged solely on DADT and the aggravating factor of drug abuse is present in your record. Based on these factors, the Board determined you do not qualify for relief under the existing policy.

Second, after thorough review, the Board concluded the potentially mitigating factors were insufficient to warrant relief under the Wilkie Memo. The Board determined your misconduct, as evidenced by your NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included a drug offense. The Board determined that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. Further, the Board concluded that your discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service, which was terminated by your separation with a General (Under Honorable Conditions) characterization. As a result, the Board concluded that significant negative aspects of your active service outweigh the positive aspects and continues to warrant a general. 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 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

[REDACTED]

Executive Director

Signed by: [REDACTED]