



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

█  
Docket No. 9726-22

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 6 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 10 August 2009. Your pre-enlistment physical examination, on 15 July 2009, and self-reported medical history both noted no neurologic or psychiatric conditions or symptoms. On 12 November 2009, you reported for duty on board the █ (█).

On 26 April 2012, you received non-judicial punishment (NJP) for: (a) two separate specifications of unauthorized absence (UA), (b) insubordinate conduct, (c) a failure to obey a lawful order, and (d) two separate specifications of making a false official statement. You did not appeal your NJP.

On 30 April 2012, your command notified you of administrative separation proceedings by reason of misconduct due to the commission of a serious offense. Your command processed

your separation using “notification procedures,” which meant the least favorable discharge characterization you could receive was General (Under Honorable Conditions) (GEN). You waived your rights to consult with counsel, to submit a statement for consideration to the separation authority, and to General Court-Martial Convening Authority review of the discharge. Ultimately, on 7 May 2012, you were discharged from the Navy for misconduct with a GEN characterization of service and assigned an RE-4 reentry code.

On 21 November 2013, the Naval Discharge Review Board denied your initial application for relief. On 23 October 2015, this Board denied your petition for a discharge upgrade.

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 for a discharge upgrade with changes in your narrative reason for separation and reentry code along with your contentions that: (a) your GEN was unjust when considering several of the Wilkie Memo factors, including but not limited to your character and reputation, your letters of recommendation, the severity of your misconduct, the length of time since the misconduct, and whether the punishment was too harsh, (b) your GEN was unjust when considering your overall quality of service and post-service contributions to your community, and (c) your GEN was unjust because your maturity level and young age resulted in a failure to adjust to military life and impacted your conduct and decision-making. For purposes of clemency and equity consideration, the Board noted you provided supporting documentation describing post-service accomplishments and advocacy letters.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade, change in reentry code, or other conforming changes to your DD Form 214. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board noted that, although one’s service is generally characterized at the time of discharge based on performance and conduct throughout the entire enlistment, the conduct or performance of duty reflected by only a single incident of misconduct may provide the underlying basis for discharge characterization. The Board determined that characterization under GEN or under Other Than Honorable conditions (OTH) is generally warranted for misconduct and is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor. The Board also noted that your enlisted performance evaluation for the period ending 15 July 2011 indicated that, shortly after you arrived to the Inport Security Force (ISF), you were dropped from the ISF for disciplinary reasons. The Board determined that the record clearly reflected your cumulative misconduct was intentional and willful and indicated you were unfit for further service. Moreover, the Board noted that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions.

The Board also noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge or reentry code to be automatically upgraded after a

specified number of months or years. As a result, the Board determined that there was no impropriety or inequity in your discharge characterization, reentry code, and narrative reason for separation, and the Board concluded that your serious misconduct clearly merited your receipt of a GEN and that such action was in accordance with all Department of the Navy directives and policy at the time of your discharge. The Board carefully considered any matters submitted regarding your character, post-service conduct, and personal/professional accomplishments, however, 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,

1/31/2023

