



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

██████████  
Docket No. 9365-22  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 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 began a period of active duty on 13 June 2017. Due to sensitive nature of your duties, you were assigned to a Personnel Reliability Program. On 30 March 2018 you were subject to nonjudicial punishment (NJP) for violations of the Uniform Code of Military Justice due to two specifications of unauthorized absences under Article 86 as well as a violation of Article 92 due to violating a Base regulation by vaping on watch. You received a performance evaluation, on 11 April 2018, in which you were described as putting forward a marginal effort with an unmotivated attitude and lack of interest in mission accomplishment. You were subject to additional NJPs in each of the following two months, first for violation of Article 111 by operating a vehicle while under the influence of alcohol over the state limit and, later, for violation of Article 92 for three specifications of missing restriction musters incident to your punishment from the second NJP. Your third NJP punishment included a written reprimand for your misconduct.

On 13 July 2018, you were notified of separation by reason of misconduct for commission of a serious offense and for a pattern of misconduct. Incident to your acknowledgment of rights, you requested a hearing before an administrative separation board. The members of the administrative board substantiated the bases for separation and unanimously recommended your separation under honorable conditions; however, the members also unanimously recommended that your separation be suspended for a period of 12 months, with each member submitted a letter outlining their rationale for the suspended separation and their belief that you should be given a chance to prove that you could correct your behavioral deficiencies. After reviewing the administrative record from your hearing and the supporting documentation regarding the recommendation for suspended separation, on 30 August 2018, the Commander, Strategic Communications Wing ██████████ approved the report of proceedings and approved your separation locally under authority granted by MILPERSMAN 1910-700. In this final decision, he expressly stated his decision to disapprove the suspension of separation stating that your actions showed an inability to conduct yourself in a disciplined manner, that you had already been given several opportunities to correct the deficiencies in your conduct in the form of verbal counseling, written counseling, mentorship, and NJP, and that administrative separation processing had not been resorted to until those methods had been exhausted. The Commander elaborated on the rationale for this decision in determining that you were ill-suited for military service and finding that the negative aspects of your conduct outweighed the positive, therefore supporting a characterization of service as General (Under Honorable Conditions). Although your final evaluation prior to your discharge on 24 September 2018 observed improvement in attitude and described you as a team player, your final overall trait average was only 2.39.

You previously applied to the Naval Discharge Review Board (NDRB), first in 2019, contending that youth and immaturity contributed to your misconduct, then again in 2022. In your subsequent request to the NDRB, you submitted the additional contentions that your discharge was improper and merited an upgraded characterization, because you believe your separation should have been suspended in accordance with the recommendation from the members of the administrative separation board and in light of consideration of your post-service conduct. On both occasions, the NDRB denied your request.

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 discharge to “Honorable” and change your narrative reason for separation to “Secretarial Authority,” as well as your contentions that it was a material error not to grant the recommended suspension and an abuse of discretion not to provide you with an opportunity for rehabilitation. You reassert that youth and immaturity affected your behavior and believe that, because your misconduct was minor in nature, it constitutes undue prejudice that you were separated short of completion of your enlistment contract with a less than fully Honorable characterization due to the prejudice it poses to your otherwise successful post-service career. You finally argue that your post-discharge character, substantiated by your personal affidavit and college transcripts, and your employment as a demolition laborer and with the ██████████, merits consideration for an upgrade based on clemency, either alone or in conjunction with the totality of your contentions. For purposes of clemency and equity consideration, the Board considered the evidence you submitted in support of your application.

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 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. Regarding your contention that it was either a material error or an abuse of discretion to disapprove the recommendation of a suspended separation, the Board found this issue without merit. First, the Board notes that a recommendation is not binding and the determination of final action squarely rested with the designated separation authority and, therefore, did not constitute material error. Second, the Board observed that the rationale laid out in the final decision acknowledged the recommendation for the suspended separation and clearly stated the rationale for disapproval of that recommendation. In reviewing the rationale given by the separation authority, the Board found no evidence to support an allegation of abuse of discretion. In fact, the Board concurred with the opinion of the decision authority in that you had been given more than ample opportunities to correct your behavior to no effect.

Further, the Board disagreed with your argument that your misconduct was minor. While restriction breaking or a brief period of UA may constitute minor offenses, the maximum punishment for intentional violation of a lawful General Order is a dishonorable discharge and confinement for a period of up to 2 years. Your first NJP included such an offense with an aggravating circumstance that the misconduct occurred during your performance of duty as a watch stander. Likewise, the Board determined your second NJP for driving under the influence of alcohol, could not be considered minor under any circumstance. The seriousness of the offense is not only recognized by the authorized maximum punishment under the Uniform Code of Military Justice but also by the risk of injury or loss of life that reckless operation of vehicles due to intoxication poses to other drivers, passengers, and pedestrians. Therefore, the Board also found this contention without merit.

Finally, regarding additional factors you present in argument for a grant of clemency, the Board observed that you submitted relatively little supporting documentation of your purported good character with the exception of academic transcripts and your own statement as evidence. While the Board favorably considered that you are attempting to rehabilitate the behavior which resulted in your less than fully honorable characterization, the Board concluded that the available evidence you submitted for consideration insufficient at this time to overcome the totality and seriousness of your misconduct as would be necessary to merit an upgraded characterization from "General (under honorable conditions)" to "Honorable" or to consider that your post-discharge conduct is so exemplary as to render unjust a narrative reason for separation which specifies the basis of misconduct. As a result, 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 is attached 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

[REDACTED]

Executive Director

[REDACTED]