



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. 1017-23
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 24 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).

You enlisted in the U.S. Navy and entered active duty on 21 February 1996 at age thirty-one (31). Your pre-enlistment physical examination, on 30 November 1995, and self-reported medical history both noted no neurologic or psychiatric conditions or symptoms. On 25 June 1996, you reported for duty on board the █ in █

On 1 October 1997, you received non-judicial punishment (NJP) for: (a) failing to obey a lawful order or regulation, (b) unauthorized absence, (c) resisting arrest, and (d) damage to government property. You did not appeal your NJP.

Following your NJP, your command notified you of administrative separation proceedings by reason of misconduct due to the commission of a serious offense. In the interim, your separation physical examination, on 12 November 1997, and self-reported medical history both noted no neurologic or psychiatric conditions or symptoms. Ultimately, on 15 November 1997, you were

discharged from the Navy for misconduct with an Other Than Honorable (OTH) characterization of service and assigned an RE-4 reentry code.

Unfortunately, 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.

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 and contentions that: (a) your service was extremely honorable and you worked extremely hard as a Food Service Assistant on board the ship, (b) you have never done drugs or smoked in your whole life, and never been in trouble with the law before and after your service, (c) your DK1 wrote you up because you tied up a phone line after hours, (d) a Navy Recruiter stole your life savings, and (e) the theft was an extremely painful episode in your life and it negatively affected your morale and was a factor that shaped your service. For purposes of clemency and equity consideration, the Board noted you provided supporting documentation describing post-service accomplishments but no 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 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 OTH conditions 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 determined that the record clearly reflected your 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 determined you did not submit convincing evidence to substantiate the theft of your life savings by a Navy Recruiter. The Board concluded that even if such misconduct occurred, there would have been absolutely no nexus between the purported theft and the misconduct underlying your discharge.

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. Lastly, absent a material error or injustice, the Board

generally will not summarily upgrade a discharge or change a reentry code solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. As a result, the Board determined that there was no impropriety or inequity in your discharge characterization and narrative reason for separation, and the Board concluded that your misconduct clearly merited your receipt of an OTH and that such action was in accordance with all Department of the Navy directives and policy at the time of your discharge. While the Board commends you on your post-discharge accomplishments, 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,

3/5/2023

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Executive Director

Signed by: █