



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

█  
Docket No. 1168-23  
Ref: Signature Date

█  
█  
Dear █

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 you did not file your application 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 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 to the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice or clemency determinations (Wilkie Memo).

The Board determined that your personal appearance, with or without counsel, would not materially add to the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Navy and began a period of active duty on 10 August 2020. Following a nonjudicial punishment (NJP) for violations of the Uniform Code of Military Justice (UCMJ) under Article 92 for failure to obey a lawful order, Article 116 due to riot or breach of the peace, and Article 128 for assault, you were issued an adverse evaluation. Subsequently, you were administratively discharged under honorable conditions for misconduct due to commission of a serious offense.

Your first application to the Board was considered on 21 September 2022, which was denied due to a general lack of documentary evidence in support of your contention that your commanding

officer at the time of your separation supported your request for an “Honorable” discharge and a change to your “RE-4” reentry code. Your request for reconsideration, considered by the Board on 6 January 2023, provided a letter purportedly from your commanding officer, expressing support for your receipt of an “Honorable” discharge. However, your request was denied due, in primary part, to lack of documentation that this letter originated from your former commanding officer.

In your most recent request, you again sought reconsideration of your original request under the same contentions with supplemental evidence. Specifically, you provided what appears to be a forwarded email chain between you and your commanding officer which seems to discuss the provision of a letter of support. These emails also included discussion of “legal” reviewing the letter prior to sending it to you electronically.

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 and seek reenlistment. For purposes of clemency and equity consideration, the Board considered the new evidence you provided in support of your request for reconsideration.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. With respect to the latter issue of your reentry code, regardless of the validity of the letter of support from your former commanding officer, the Board noted that the letter expressly states that your actions warranted administrative separation without, at any point, asserting that you should be permitted reenlistment or a changed reentry code. As a result, the Board found insufficient evidence to support your request for a change to your reentry code.

With respect to your request to upgrade your discharge to “Honorable,” the Board noted that your purported letter of support identifies that your misconduct was an isolated incident and out of character. As previously addressed in the Board’s decision of 6 January 2023, neither the letter of support you submitted for consideration nor your official military personnel file sufficiently identifies the specific details of your three violations of UCMJ that would be necessary for the Board to weigh the severity of your offenses against the favorable factors you present for consideration. Moreover, you did not endeavor in your request for reconsideration to provide any further clarity. Instead, you reiterated the information contained in the letter of support. On this point, the Board observed that any of your three offenses at NJP could have resulted in a Bad Conduct Discharge, if tried before court-martial, and were, therefore, considered serious offenses. The Board also viewed your violation of lawful orders, breaching of the peace, and assault all the more serious in light of your assignment to an overseas command in a foreign territory wherein your communications duties required you to qualify for security clearance to access Top Secret – Sensitive Compartmented Information. Regardless that your misconduct was an isolated incident or out of character, the Board found that it lacked sufficient evidence of the nature and severity of your apparently violent misconduct and disobedience to conclude that your administrative discharge under honorable conditions was either unjust or not properly considered at the time it was issued. Therefore, 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,

3/21/2023

[REDACTED]