



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

██████████
Docket No. 1344-23
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 31 March 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).

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 Marine Corps and began a period of active duty on 10 March 2014. While home on leave, you were arrested, on 10 June 2014, by civil authorities for sexual misconduct with a 15-year old female, who was under the legal age of consent under ██████████ law. On 21 July 2014, you received nonjudicial punishment (NJP) for violation of Article 92 of the Uniformed Code of Military Justice (UCMJ) due to your violation of company policy and for Article 107 due to your false official statement that you did not possess a cellphone or electronic device.

That same day, you were processed for administrative separation under Other Than Honorable (OTH) conditions for misconduct due to commission of a serious offense on the basis of your arrest and pending civil charges for sexual misconduct, and you waived your right to a hearing

before an administrative separation board. Ultimately, you were discharged, on 6 August 2014, with an OTH due to commission of a serious offense.

Your previous application to the Board was considered on 5 January 2020 wherein you sought a change of your reentry code to "RE-1" because you desire a second chance to serve. You stated that your felony civil conviction was for an offense which occurred after boot camp when you made the "mistake" of getting involved with your ex-girlfriend, that you had maintained a good job, and that you wanted to prove to your children that it was worth fighting for the opportunity to finish what you had started. Your request was denied on 9 December 2019.

On 7 October 2022, you obtained a court order from the state of ██████████ dismissing your felony conviction and all pleas under ██████████ penal Code 1203.4. This order expressly noted that dismissal of your felony conviction did not automatically relieve you of the requirement to register as a sex offender, which requires a separate process.

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 change your reentry code to something less restrictive than "RE-4" and seek the opportunity to enlist in the Army, which you contend that a recruiter informed you might be possible if you obtained a change to your reentry code. 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.

Additionally, the Board noted that submitted evidence in support of post-discharge character and rehabilitation, to include a letter from a former Army service member who is also a retired law enforcement officer and current supervisory Federal investigator, expressing knowledge of your "past challenges" and recommending the change to your reentry code. Foremost, the Board noted that your current "RE-4" code itself is restrictive but not unequivocally prohibitive; there is a process by which recruiters, especially those in a different military department than that which issued the original discharge characterization and code, are able to seek waivers for enlistment. Regardless, the Board also observed that a change to your reentry code does not resolve the larger, lingering issue with respect to your continued offense, which has essentially been classified as less severe, but has not been expunged or pardoned. The Board noted that the court order you presented specifies that you may still be required to register as a sex offender, and you provided no evidence to the contrary. Notwithstanding the letter you provided in support of your post-discharge character, the Board concluded that the potentially favorable factors you submitted for consideration are insufficient to outweigh the seriousness of your sexual misconduct with an underage female. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization and RE-4 reentry code. 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,

4/18/2023



Executive Director