

## **DEPARTMENT OF THE NAVY**

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

> Docket No. 2225-23 Ref: Signature Date

Dear

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 submitted in a timely manner, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session, considered your application on 27 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 this 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 their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the United States Navy and commenced a period of active duty on 18 July 2012. On 15 July 2014, you were found guilty at non-judicial punishment (NJP) of violating Uniform Code of Military Justice (UCMJ) Article 92, for failure to obey an order by breaking curfew in violation of the governing regulations, and Article 134, for disorderly conduct. You received your second NJP, on 24 July 2015, for violating UCMJ Article 91, for willful disobedience of a chief petty officer by failing to complete and return your FSA check-in sheet to the FSA Office. You received your third NJP, on 2 June 2016, for violating UCMJ Article 86, for a period of absence without leave. You did not appeal any of these NJPs. On 15 July 2016, prior to the end of your active service obligation, you were discharged from the service with a General (Under Honorable Conditions) (GEN) characterization of service and assigned an RE- 4 reentry code.



Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request, on 1 May 2018, after determining your discharge was proper as issued.

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: (1) your desire to upgrade your characterization of service, (2) your complete service record, (3) your argument that you were unjustly discharged with a reduced discharge characterization mere days from the end of your service contract, and (4) your assertion that you were struggling with personal life stressors at the time, to include the deaths of family members. For purposes of clemency and consideration, the Board noted that you provided advocacy letters and documentation of post-service accomplishments.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your three NJPs, outweighed these mitigating factors. In making this finding, the Board considered your repeated misconduct and its negative impact on mission accomplishment. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command, and the Board determined that your misconduct was contrary to Navy core values and policy. Finally, although you had almost completed your service contract, the Board determined your command had the authority to process you administrative separation due to your pattern of misconduct. As you had less than six years of service, and the command was pursuing a GEN discharge, you were not entitled to present your case at an administrative separation board. The Board ultimately determined the separation authority did not abuse their discretion by concurring with your command and assigning a GEN characterization of service. As a result, the Board concluded that significant negative aspects in your record continue to make a GEN characterization appropriate in your case.

The Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. Absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. While the Board carefully considered the evidence you submitted in mitigation, 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,

4/18/2023

Executive Director