



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. 2531-23
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 7 April 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) and the Under Secretary of Defense Memo of 20 September 2011 (Correction of military records following repeal of 10 U.S.C. §654).

You enlisted in the Navy and began a period of active service on 5 January 1999. On 12 March 1999, following a medical evaluation, you were diagnosed with oppositional defiant disorder, and you were recommended for entry-level separation. As a result of the foregoing, on 16 March 1999, you were notified of the initiation of administrative separation processing for the convenience of the government. On the same day of your notification, you waived your right to consult with counsel. On 29 March 1999, your commanding officer recommended you be discharged with an uncharacterized entry-level separation based on your diagnosis. On 1 April 1999, you were so discharged.

Under the Don't Ask, Don't Tell Repeal Act of 2010, and the Under Secretary of Defense Memo of 20 September 2011 (Correction of military records following repeal of 10 U.S.C. §654), the Board can grant a request to upgrade a discharge that was based on homosexuality when two

conditions are met: (1) the original discharge was based solely on “Don’t Ask Don’t Tell” (DADT) or similar policy, and (2) there were no aggravating factors such as misconduct.

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 and Under Secretary of Defense Memo of 20 September 2011 (Correction of military records following repeal of 10 U.S.C. §654). These included, but were not limited to, your desire to upgrade your character of service and your contentions that you were fearful that your fellow service members would discover you were gay, you informed your commanding officer you feared for your life, you believe your current character of service has prevented you from employment opportunities, and you would like your character of service removed along with compensation. For purposes of clemency and equity consideration, the Board noted you did not provide documentation describing post-service accomplishments or advocacy letters.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that you were appropriately discharged for the convenience of the government based on your diagnosed oppositional defiant disorder and properly assigned an uncharacterized entry-level separation based on your time in service. Applicable regulations authorize an uncharacterized character of service if the processing of an individual's separation begins within 180 days of the individual's entry on active service. Your record shows you were discharged after two months and 27 days of active duty service. While there are exceptions to this policy for cases involving misconduct or exceptional performance, the Board found no evidence either exception applied in your case. Finally, while the Board considered your contention that you were discharged based on your sexual orientation, they were unable to find any evidence to substantiate your allegation. Your record clearly documents that your basis for separation was due to your diagnosed oppositional defiant disorder and not your sexual orientation. In making this finding, the Board relied upon the 12 March 1999 mental health evaluation conducted by a qualified mental health provider. 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 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,

4/19/2023

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Executive Director

Signed by: █