



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

[REDACTED]  
Docket No. 2781-23  
Ref: Signature Date

[REDACTED]

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 28 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).

You enlisted in the Navy and began a period of active duty on 4 October 2010. On 8 March 2011, the Fleet and Family Support Center advised Naval Criminal Investigative Services (NCIS) that six female sailors had obtained protective orders against you on various claims of sexual misconduct and sexual harassment, and NCIS opened an investigation initially into potential violations of Article 92 of the Uniform Code of Military Justice (UCMJ) due to behavior which was alleged to create a hostile work environment. You subsequently were advised of your Booker rights and elected to accept nonjudicial punishment (NJP) rather than demand trial for the following allegations of UCMJ violations against you: two specifications of Article 120 for indecent conduct, to include wrongfully committing indecent conduct by showing a picture of your genitals to four female sailors and wrongfully committing indecent conduct by showing a picture of your naked body to a female sailor; two specifications of Article 120, wrongful sexual contact, for engaging in sexual contact with a female sailor by grabbing her buttocks without legal justification or lawful authorization and without her permission; seven

specifications of Article 134 for orally communicating indecent language through a variety of highly specific, lewd comments to both individual female sailors and groups of female sailors. You were found guilty of those offense by a preponderance of the evidence, notified of processing for administrative separation by reason of misconduct due to commission of a serious offense, and elected a hearing before an administrative separation board with representation by legal counsel.

At your hearing, on 27 September 2011, the members found that the basis of separation for misconduct due to commission of a serious offense was substantiated by a preponderance of the evidence, citing the specific evidence relied upon to include the statement of a female sailor, a number of statements in support of the Government's allegations, lack of supporting witnesses for your position other than your own testimony, and contradictory evidence given by you. The members recommended that you be separated under Other Than Honorable (OTH) conditions. Subsequently, Commanding Officer, [REDACTED], concurred with the findings and recommendations of the administrative separation board, and you were discharged on 3 November 2011 with an OTH.

You previously applied to the Naval Discharge Review Board (NDRB) for consideration of an upgrade to your discharge, which conducted a documentary review on 8 August 2017 and a telephonic hearing on 2 May 2022. In relevant part, you contended that your character of discharge was inequitable and that your post-discharge conduct should be considered for an upgrade. The summary of these reviews indicates that you provided the NDRB with numerous letters of reference, training and education certifications, as well as other documentation to support an upgrade, although those supporting documents are not included or available with the final decision that was recorded in your official military personal file (OMPF). Your requests were denied by the NDRB after it concluded 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, your desire for a discharge upgrade and your counsel's contention that you submitted "45 letters" attesting to your character and community service, to include that you are serving as the first and youngest black fire chief for the second largest transportation agency on the continent, as well as your assertions that you were disciplined and discharged by means of a "seriously deficient" process, in that you allege the NCIS investigation, NJP, and administrative separation board were all "strongly influenced by racial disparity." You believe that, because you are an African American, you were singled out and harshly punished for your conduct and/or misconduct; you also believe that victims were improperly solicited to make allegations against you, and that you were personally targeted. You presented evidence of a witness statement from a female civilian employee who served as the Drug and Alcohol Program Advisor at your command at the time of the action taken against you, wherein she states that she was surprised the incident moved forward based on her personal assessment that the accusers' statements were flawed. She further confirms that she reached out to you to provide you with a statement because of the disparity she felt she had observed in process employed in your case. You also point to testimony during your hearing that you had been "counseled not to harass female students" but note that no such counseling is in your OMPF. You further assert that you were denied the opportunity to present a case in your defense and that your detailed military defense counsel did not call witnesses to corroborate your version of the facts. Finally, you allege that the Recorder for the Government questioned his witnesses in a racially motivated

manner to portray you as “a poor young black man from a troubled home who had no role model and had gotten married too young” to show that you lacked rehabilitative potential. In support of your contentions regarding the racially disparate handling of the allegations against you, you attached evidence of a GAO report with service responses and informational articles addressing racial disparity in the administration of military justice. In totality, you do not believe the allegations against you rise to the level to warrant an OTH discharge. 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 NJP, 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. Of note, and notwithstanding the assertions put forth in your counsel’s brief, the Board was unable to locate the massive volume of character letters and post-discharge evidence of good conduct which you assert is proof of your rehabilitation potential and, thus, supports an upgrade of your discharge on the basis of clemency. The Board noted that you submitted only external evidence of a generalized finding that military discipline and administrative separations might be affected by racial disparity but no specific witness statements as evidence that it occurred in your case. The Board also observed that your evidence is primarily concerned with the veracity of the statements made by the various female sailors. Moreover, the Board noted your record reflects that you were at a training command, and not stationed upon a naval vessel, therefore, under a presumption of regularity, and in light of the Booker rights attached to your NJP, you were afforded the opportunity to refuse NJP and demand a right to trial by court-martial. Instead, you elected to avoid the potential jeopardy of a federal conviction and accept disposition of your offenses in a lesser nonjudicial forum at which the NJP authority determined you were more likely than not guilty of the alleged offenses. You were further afforded the right to a hearing before an administrative board where you were represented by qualified and, presumptively therefore, competent military legal counsel.

To the extent that you raise the issue of ineffective assistance of counsel by asserting that your former counsel failed to call witnesses to corroborate your version of events, you have presented evidence addressing a single day in question, regarding one or more of the allegations made against you. The Board noted that this evidence does not assert that he was prepared to testify on your behalf or that, if otherwise available to do so, that he was denied the opportunity for any reason. Nor does this statement address the entire scope of the allegations against you, which distinctly appear to have occurred at length over a period of time during multiple incidents, with different individuals. Likewise, although the Board acknowledges your assertion that these female sailors conspired against you, the Board observed insufficient evidence to support a conclusion that a disparate group of female sailors of different races, different backgrounds, and different relationship statuses – as documented by their statements to NCIS and during your hearing – had reason to fabricate the extent of the offenses which were ultimately substantiated against you. In fact, based on the individualized and highly specific nature of the indecent comments referenced in the charges, the Board concluded, more likely than not, you made those comments. In that regard, the Board wholly concurred with the findings and recommendations of the administrative separation board.

Further, the Board found it extremely concerning that your behavior created such a hostile environment that multiple female sailors felt a need to pursue protective orders to insulate themselves from your continued and, apparently, pervasive sexual misconduct. The Board noted that the offense for which you were separated would, under current policy, require disposition by a designated Sexual Assault – Initial Disposition Authority before being disposed of either via NJP or separation rather than trial by court-martial. In this regard, the Board observed the high likelihood that the scope and nature of the sexual offenses alleged against you would result in a trial today. As such, the Board was not persuaded by your arguments that you were unfairly punished, or that the outcome of your misconduct was the result of racial disparity.

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. While the Board would have preferred that your referenced post-discharge character evidence was available for review and consideration, the Board carefully considered the evidence you submitted in mitigation. However, 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 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,

[REDACTED]  
5/9/2023

[REDACTED]  
Executive Director

Signed by: [REDACTED]