



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

█
Docket No. 3274-23
Ref: Signature Date

█

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 reconsideration application on 5 May 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 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 U.S. Navy and entered active duty on 18 January 2001. Your pre-enlistment medical examination, on 21 September 2000, and self-reported medical history noted no psychiatric or neurologic conditions or symptoms. On 26 August 2001, you reported for duty on board the █ in █.

On 6 January 2004, you received non-judicial punishment (NJP) for missing movement and unauthorized absence (UA). You did not appeal your NJP. The same day, your command issued

you a “Page 13” retention warning (Page 13). The Page 13 warned you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative separation.

On 30 June 2004, you received NJP for the wrongful damage or destruction of government property, and for two separate specifications of failing to obey a lawful order or regulation. You did not appeal your NJP. Later, on the same day, you commenced a period of UA that terminated after fourteen days on 14 July 2004. On 15 July 2004, you received NJP for breaking restriction and your two-week UA. You did not appeal your NJP.

On 19 July 2004, your command notified you of administrative separation proceedings by reason of misconduct due to a pattern of misconduct. You expressly waived in writing your rights to consult with counsel, submit a written statement, and to request an administrative separation board. Ultimately, on 9 August 2004, you were separated from the Navy for misconduct with an under Other Than Honorable conditions (OTH) discharge characterization and assigned an RE-4 reentry code.

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 contentions that: (a) you were the victim of racial discrimination and disparate treatment on board the █, (b) your supervisor subjected you to a steady dose of a steady dose of racial slurs and derogatory comments regarding your Hispanic heritage from the day you reported onboard, (c) you broke restriction and went UA to attend your own wedding ceremony after your command denied your liberty requests, and (d) post-service you have strived to be the best citizen, husband, and father you can be, you are very active in the Hispanic community, and have served in countless volunteer capacities. For purposes of clemency and equity consideration, the Board noted you provided advocacy letters that discussed post-service accomplishments.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that you did not provide convincing evidence that you were the victim of racial discrimination and disparate treatment on active duty. The Board determined that characterization under OTH conditions is generally warranted for misconduct and is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor. The Board determined that the record clearly reflected your misconduct was intentional and willful and indicated you were unfit for further service. Moreover, the Board noted that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions.

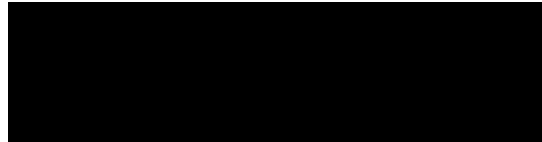


As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your misconduct and disregard for good order in discipline clearly merited your discharge. While the Board commends your post-discharge accomplishments and carefully considered 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,

5/10/2023



Executive Director

Signed by:

