



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. 3457-23
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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 1 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 this Board. Documentary material considered by the Board consisted of your application together with all material submitted in support thereof, relevant portions of your service 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 23 July 2002. On 30 October 2003, you received non-judicial punishment (NJP) for violating Uniform Code of Military Justice (UCMJ) Article 111, for drunk driving, and Article 134 (Federal Assimilated Crimes Act). You were formally counseled that continued misbehavior would not be tolerated and could result in your administrative separation. On 23 January 2004, you received your second NJP for violating UCMJ Article 86, for a period of unauthorized absence (UA), and Article 134, for underage possession of alcohol. You did not appeal either NJP.

On 12 July 2004, you completed Level III inpatient substance abuse treatment, during which time you were diagnosed with alcohol dependence. On 26 May 2005, you received your third NJP for violating UCMJ Article 134, for drunkenness. You did not appeal your NJP.

On 26 May 2005, you were notified that you were being processed for an administrative discharge by reason of misconduct due to commission of a serious offense, pattern of misconduct, and alcohol rehabilitation failure. You waived your right to consult with qualified counsel and your right to present your case at an administrative separation board. On 15 June 2005, you were discharged from the Navy for "Pattern of Misconduct" with an Other Than Honorable (OTH) characterization of service and assigned an RE- 4 reenlistment code.

You previously submitted a petition to the Navy Discharge Review Board and were denied relief on 14 April 2011.

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 upgrade your discharge characterization and your contentions that any service member who has been released under an OTH characterization may be given an Honorable characterization 15 years after discharge and you have been a model citizen since your discharge from the Navy. For purposes of clemency and equity consideration, the Board noted that you provided documentation of your post-service accomplishments, to include your service to the community as an Emergency Medical Technician.

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 the seriousness of your misconduct and the fact that it involved continual substance abuse throughout your time in service. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command. The Board determined that serious and continuous alcohol abuse use is contrary to the Navy core values and policy, renders such Sailor unfit for duty, and poses an unnecessary risk to the safety of fellow shipmates. The Board determined that the OTH characterization remains appropriate in your case because your misconduct was a significant departure from the conduct expected of a service member.

Despite your contention, 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. Further, the Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. While the Board commends your post-discharge accomplishments, even in light of the Wilkie Memo and reviewing the record and 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,

5/17/2023

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Deputy Director

Signed by █