



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. 6798-23
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 25 September 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 Navy and began a period of active service on 25 April 1983. On 4 October 1986, you were issued administrative remarks regarding your adverse 6 October 1986 performance evaluation. On 9 March 1989, you were found guilty at a special court-martial (SPCM) of conspiring to steal retail merchandise of a value of about \$1, 213.81, property of █, a 38-day period of unauthorized absence (UA), violating a lawful general order by wrongfully using your naval position to gain sexual favors, two specifications of larceny for stealing merchandise, property of █ and a █ of a fellow service member, seven specifications of forgery of credit card transaction slips, and of

committing an indecent assault on a fellow service member. You were sentenced to confinement for 120 days, to forfeit \$460.00 pay per month for four months, to be reduced in rank to E-1, and to a Bad Conduct Discharge (BCD). After completion of appellate review, you were separated from the Navy, on 24 October 1989, with BCD.

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 and to change/correct your name. You contend that: (1) you have been a law abiding citizen since your discharge, (2) your discharge was unfair, (3) you deserve benefits for your service, (4) only recently has the Don't Ask, Don't Tell (DADT) discharge become upgradeable, and (5) you have lived your life as a transgender woman since your discharge. The Board noted you checked the "Other Mental Health," "Sexual Assault/Harassment," "DADT," and "Transgender" boxes on your application but provided no evidence in support of your claims. 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 your misconduct, as evidenced by your SPCM, 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. Further, the Board noted that you provided no evidence to substantiate your contentions or that a court of competent jurisdiction ordered your name to be changed. Absent such evidence, the Board was unable to find evidence to support your requested relief. Additionally, even if the Board were to consider your case under the current DADT, they determined the circumstances of your case do no merit relief since there is no evidence you were discharged based on your sexual orientation and your SPCM conviction constitutes disqualifying aggravating factors. Finally, 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. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant a BCD. Even in light of the Kurta, Hagel, and Wilkie Memos and reviewing the record liberally 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. 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,

10/12/2023

