



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. 7044-23
Ref: Signature Date



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 8 January 2024. 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.

During your enlistment processing you disclosed a speeding infraction. You enlisted in the Navy and commenced a period of active duty on 1 May 1991. On 3 May 1991, you were issued administrative remarks documenting your failure to disclose additional traffic violations yet retaining you in the Navy and advising you that further deficiencies in your performance or conduct may result in processing for administrative separation. You completed a period of Honorable service on 27 August 1994 and reenlisted on 28 October 1994.

On 17 December 1994, you received nonjudicial punishment for violating the equal opportunity instruction when you said, "F**king ni--ers, goddamned c--ns, they all ought to be shot!" which was directed at an African-American sailor who was cleaning the berthing compartment. You

were subsequently notified of your pending administrative separation processing by reason of commission of a serious offense (COSO) and waived your right to consult with counsel and have your case heard before an administrative discharge board. On 14 February 1995, you were discharged with an Other Than Honorable (OTH) characterization of service by reason of COSO. On 3 November 2004, your request for a discharge upgrade and reentry code change via the Naval Discharge Review Board (NDRB) was denied.

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 Memos. These included, but were not limited to, your desire to upgrade your discharge and contentions that: (1) you made mistakes while in the Navy, (2) you were very immature, (3) since your discharge you have served honorably in the United States Army National Guard and United States Army Reserve, (4) you have attained the rank of Master Sergeant (E-8) due to your leadership and commitment, (5) you have earned a Meritorious Service Medal, two Army Commendation Medals, and three Army Achievement Medals due to the character of your service, (6) you have attained your Master's Degree in Public Administration from Troy University, and (7) you have completed all non-commissioned officer education courses required for your current grade as a Master Sergeant. For purposes of clemency and equity consideration, the Board noted you provided your Meritorious Medal Citation, non-commissioned officer evaluation from 01 May 2022 to 30 April 2023, and your Certificates of Release or Discharge from Active Duty (DD Form 214s).

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. The Board also considered the likely negative effect your conduct had on the good order and discipline of your unit. Finally, the Board was not persuaded by your arguments regarding your immaturity considering you were approximately 28 years old when your NJP occurred. As a result, the Board concluded your conduct constituted a significant departure of that expected of a service member and continues to warrant an OTH. While the Board carefully considered the evidence you submitted in mitigation and commends you for your post-Navy accomplishments, 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 mitigating 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,

1/19/2024

