





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


Docket No. 7543-23
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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 23 October 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, 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).

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) 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 duty on 18 September 1987. On 12 December 1988, you were evaluated by a medical officer as a result of a domestic disturbance with your spouse. Subsequently, you were diagnosed with Alcohol Abuse, Depression, Marital Discord, Suicidal Ideation, Role out Personality Disorder. On 14 December 1988, you were evaluated by a medical officer and diagnosed with Depression, Marital Discord, Suicidal Ideation. In 1989 you were assigned to Naval Hospital,  for alcohol rehabilitation. On May 1990, you sustained an argument with your spouse which resulted on you assaulting her and breaking her arm. On 10 June 1990, you were evaluated by a medical officer and diagnosed with Marital

Problem, Alcohol Dependency, and Personality Disorder NOS, with immature and compulsive components. On 24 July 1990, you were convicted by summary court martial (SCM) for aggravated assault, and inflicting grievous bodily harm on another. You were sentenced to the inferior grade of E-2, and confinement for 30 days. On 15 August 1990, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to commission of a serious offense, at which point, you decided to waive your procedural rights. Your commanding officer recommended you be discharged with an Other Than Honorable (OTH) discharge characterization by reason of misconduct due to commission of a serious offense. On 24 August 1990, the separation authority approved the recommendation and ordered you discharged. On 31 August 1990, you were so discharged.

On 26 February 2016, this Board denied your request for a discharge characterization upgrade.

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 contention that: (a) you were put under pressure by the countless times your wife cheated on you and being told by others who witnessed, (b) you should have been the bigger person and walk away, but wanted your family together, (c) you are a very good man with a heart, very outgoing kind, and loving, (d) the love you have for your three children and eight grandchildren is beyond measure, and (e) you made the biggest mistake of your life by laying your hands on your former spouse. 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 SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact it had on the good order and discipline of your unit. Further, the Board noted that your spousal abuse was inconsistent with your contention that you wanted to keep your family together. 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 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 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 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,

11/1/2023

