



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

█
Docket No. 7705-23

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 submitted within the statute of limitations, the Board found it in the interest of justice to review your request. 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 this 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).

You enlisted in the United States Navy and commenced a period of active duty on 23 June 1999. On 3 April 2000, you received non-judicial punishment (NJP) for violating Uniform Code of Military Justice (UCMJ) Article 86, for two specifications of unauthorized absence from your appointed place of duty, and Article 91, for two specifications of insubordinate conduct towards a petty officer. On 21 July 2000, you received your second NJP for violating UCMJ Article 86, for UA from your appointed place of duty, and Article 91, for two specifications of insubordinate conduct towards a petty officer. On 18 August 2000, you received your third NJP for violating UCMJ Article 86, for three specifications of unauthorized absence from appointed place of duty. You did not appeal these NJPs.

On 16 September 2000, you were found guilty at Summary Court-Martial (SCM) of violating UCMJ Article 86, for eight specifications of unauthorized absence, Article 91, for two specifications of insubordinate conduct, Article 92, for failure to obey a lawful order, and Article

134, for communicating a threat. You were sentenced to 30 days confinement and forfeitures of pay. On 31 August 2001, you were found guilty at a second SCM of violating UCMJ Article 89, for disrespect toward the CO, Article 91, for three specifications of disrespectful language towards a CPO, and Article 92, for two specifications of failure to obey a CPO. You were sentenced to 30 days confinement, forfeitures of pay, and reduction in rank to E-1.

On 25 September 2001, you were notified that you were being processed for an administrative discharge by reason of misconduct due to commission of a serious offense (COSO) and pattern of misconduct. You waived your right to consult with counsel and your right to present your case at ADSEP board. On 12 November 2001, you were discharged from the Navy due to your repeated misconduct and assigned an "Other than Honorable" (OTH) characterization of service and 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: (1) your desire to change your discharge characterization, narrative reason for separation, and reentry code, (2) your assertion that you were subjected to bullying and sexual harassment during your time on the █, and (3) the impact that such harassment had on your conduct during service. For purposes of clemency and equity consideration, the Board noted that you provided advocacy letters and documentation of post-service accomplishments.

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 NJPs and SCM convictions, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it involved repeated periods of UA and multiple incidents of insubordination. 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 such misconduct is contrary to the Navy core values and policy, and places an undue burden on fellow shipmates. Additionally, the Board felt that there was insufficient information in the record to support a nexus between asserted harassment and the underlying misconduct. The Board also highlighted that you did not raise any concerns during your separation processing and instead waived your right to present such matters at an ADSEP board. A characterization under OTH conditions 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 service member. The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade, a change to your narrative reason for separation, or a change to your reentry code.

The board commends your post-service accomplishments, however, determined that there was no impropriety or inequity in your discharge and your misconduct clearly merited your receipt of an OTH. 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 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,

10/12/2023



Executive Director

Signed by: █