



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. 7840-23

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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your reconsideration application on 6 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, 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 U.S. Navy and began a period of active duty service on 17 February 2004. Your pre-enlistment physical examination, on 28 April 2003, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms.

On 16 March 2007, you received non-judicial punishment (NJP) for unauthorized absence,

failure to obey a lawful written order, and for the incapacitation for the performance of duties due to the wrongful indulgence of intoxicating liquor. You did not appeal your NJP. On the same day, your command issued you a “Page 13” retention warning (Page 13). The Page 13 expressly warned you that any further deficiencies in your performance and/or conduct may result in disciplinary action and processing for administrative separation. You did not submit a Page 13 rebuttal statement.

On 28 May 2008, you received NJP for the drunken/reckless operation of a vehicle. You did not appeal your second NJP.

On 29 May 2008, your command notified you of administrative separation proceedings by reason of misconduct due to a pattern of misconduct. Your command processed your separation using “notification procedures,” which meant the least favorable discharge characterization you could receive was General (Under Honorable Conditions) (GEN). On 30 May 2008, you expressly waived your rights to consult with counsel, to submit a statement for consideration to the separation authority, and to General Court-Martial Convening Authority review of the discharge. In his separation recommendation/endorsement, your commanding officer stated the following:

Despite counseling and warning, ██████████ continues to commit misconduct as noted above. ██████████ could have been a great Sailor, but he is either incapable, or simply unwilling to conduct himself in a manner conducive to good order and discipline. I strongly recommend that ██████████ be separated from the naval service by reason of misconduct due to a pattern of misconduct, and that his characterization of service be a General (Under Honorable Conditions) discharge.

On 3 June 2008, the Separation Authority approved and directed your discharge for misconduct due to a pattern of misconduct with a GEN characterization of service. Ultimately, on 9 July 2008, you were discharged from the Navy for misconduct with a GEN characterization of service and assigned an RE-4 reentry code.

On 11 December 2018, the Naval Discharge Review Board (NDRB) denied your initial application for relief. The NDRB determined your discharge was proper as issued and no change was warranted. On 25 August 2022, the NDRB granted you partial relief. The NDRB initially denied you relief based on any post-service conduct considerations. However, the NDRB did not believe you were “deserving of the enduring recognition of someone who is incapable of upholding standards,” and changed your narrative reason for separation and separation code. The NDRB did not upgrade your discharge or change your reentry code, in part, because the NDRB “was challenged to further minimize or completely excuse your alcohol related events.”

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 contentions that: (a)

your command violated regulations by failing to refer you for an alcohol screening after your first alcohol-related incident, (b) had the Navy followed mandatory procedures, it was very possible you would not have had a second alcohol-related incident and thus not separated at all, (c) although you have never blamed the Navy for your decisions and take full responsibility for your actions, the fact that you were not afforded mandatory intervention that could have prevented a second alcohol-related incident and your subsequent separation provided a compelling basis to upgrade your discharge, (d) there is compelling justification for the Board to grant relief based upon your exemplary post-service conduct, and (e) your documented contributions as an employee and community member over the last fifteen (15) years invokes several Wilkie Memo factors favoring relief. For purposes of clemency and equity consideration, the Board considered the entirety of the evidence you provided in support of your application.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. First, the Board was not persuaded by your argument that the Navy was at fault for your second alcohol-related offense, considering it was well over fourteen (14) months after your first alcohol related offense. The Board determined you responsible for your behavior to ensure you conformed to acceptable standards of good order and discipline. The Board was also not persuaded by your argument that you take responsibility for your actions, but that you should still somehow receive relief because you did not receive any type of dependency screening after your first offense in March 2007. The Board determined your contention, that if you were screened it was possible you would not have had a second alcohol-related incident, to be speculative at best. The Board noted that you did not engage in any alcohol-related misconduct or abuse between your NJPs, nor did you act or behave in such a way indicating: (a) a likelihood you would continue to allow alcohol to interfere with your job performance, and/or (b) you were consistently or periodically abusing alcohol and were somehow a safety risk to yourself and others. You otherwise performed your duties and behaved satisfactorily until such time you made the conscious and intentional decision to drive while intoxicated.

The Board also believed you received considerable clemency from your command when they processed you for separation with notification procedures, thus making the least favorable discharge characterization you could receive being a GEN. As a Master-at-Arms, you were placed in a unique position of trust and responsibility in the Navy, a position you betrayed when you committed multiple instances of misconduct. The Board believed that your misconduct could have easily warranted an under Other Than Honorable conditions (OTH) characterization.

Further, the Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that characterization under GEN or OTH conditions is generally warranted for misconduct and 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 Sailor. The Board determined that the record clearly reflected your misconduct was intentional and willful and indicated you were unfit for further service. Moreover, the Board noted that the evidence of record did not

demonstrate that you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions.

As a result, the Board determined that there was no impropriety or inequity in your discharge, after concluding that your misconduct and disregard for good order in discipline clearly merited a GEN characterization of service. While the Board carefully considered the evidence you submitted in mitigation and commends your post-discharge 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 mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct and determined that any injustice in your record was adequately addressed by the relief granted by the NDRB. 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,

10/19/2023

