



**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. 8474-23  
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 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 1 December 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 took your oath of office and commissioned as an Ensign following graduation from the U.S. Naval Academy on 29 May 1991. You eventually promoted to the grade/rank of Lieutenant Commander on 22 June 2001.

In August 2005, the Naval War College (NWC) received a letter from your spouse claiming that you had engaged in an adulterous affair with First Class Petty Officer (E-6). Your spouse also



claimed that you were not providing financial support for her and your child. The affair was alleged to have begun in 2002 while you and the E-6 worked together in the Reactor Division on board the ██████████, subsequently continued while you were the Executive Officer on the ██████████, and that the affair was purportedly still ongoing.

Your spouse provided to the NWC a copy of an audio recording of a conversation between you and her. During this conversation you admitted: (a) you had sexual intercourse multiple times with a female you initially met while you were in a training pipeline, (b) you engaged in the affair because you were unhappy, saw an opportunity, and took it, (c) you confessed this information to your wife because you were tired of lying and wanted to get this burden off your chest, (d) you had this extramarital affair knowing that the relationship constituted fraternization, that he knew fraternization was against Navy policy, and that you clearly did not want the Navy to know about such affair, and (e) you would “take this female down with you” if your spouse turned you in to the Navy. Your spouse also provided a copies of your frequent flyer statements and credit card statements indicating that you flew to the E-6’s location on divers dates and purchased goods and services in her local area of ██████████, ██████████ during such times.

During the course of the NWC investigation into your fraternization and adultery, and after being advised of your rights, you provided a sworn statement to the command investigator that you had not traveled to the ██████████, ██████████ area between November 2004 and January 2005, you denied any personal or sexual relationship with the E-6, and you also denied having sex with anyone other than your wife since being married.

In November 2005, your command charged you with failing to obey a lawful general order/regulation prohibiting fraternization,<sup>1</sup> adultery, two separate specifications of making a false official statement, and three separate specifications of conduct unbecoming an officer and gentleman related to your fraternization and adulterous relationship. After your interview with the command investigator and prior to the NJP, you were provided with a copy of the evidence against you in your command’s possession.

On 22 November 2005, you received non-judicial punishment (NJP) for your charged offenses. At the NJP hearing, you admitted you were guilty of making a false official statement to the command investigator about traveling to ██████████ and you admitted you lied in order to protect the female. You also admitted it was you and your spouse on the audio recording, but you claimed you lied to your spouse on that call about committing adultery and fraternization during the 34-minute conversation in order to provoke your spouse into leaving you, even though your spouse already knew about the E-6. You asserted at NJP that you were now telling the truth in your statements at NJP, even though you admitted you lied previously to benefit your own personal interests.

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<sup>1</sup> The governing general regulation at the time, OPNAVINST 5370.2B (Navy Fraternization Policy), provided that personal relationships between officer and enlisted members that are unduly familiar and that do not respect differences in grade or rank are prohibited.

You were found guilty at NJP of fraternization, adultery, three specifications of making a false official statement, and two of the three charged specifications of conduct unbecoming an officer and gentleman. You were awarded a punitive letter of reprimand (PLR), restriction, and forfeitures of pay. The forfeitures were suspended. You appealed both your NJP and PLR. On 17 April 2006, the General Court-Martial Convening Authority over the NWC denied your appeals.

In the command's Report of NJP dated 18 April 2006, NWC President recommended to Navy Personnel Command (PERS-4834) that you be required to show cause for retention in the naval service. The NWC President also recommended that you be detached for cause and reassigned as a result of your NWC disenrollment. On 5 May 2006, you declined to submit comments on either the NJP Report or the PLR.

On 21 June 2006, the Show Cause Authority (PERS-4834 or SCA) initiated administrative action requiring you to show cause for retention based on your documented misconduct and substandard performance of duty. The SCA stated the least favorable characterization you could receive under the circumstances was under Other Than Honorable conditions (OTH). The SCA notification advised you that you could, *inter alia*: (a) submit any matter that you deem pertinent, (b) tender a qualified resignation request for a General (Under Honorable Conditions) (GEN) characterization of service in lieu of separation processing, (c) confer with military counsel, or civilian counsel at no expense to the government, and (d) had the right to submit a statement concerning the insertion of adverse material relating to the administrative separation process. The SCA notification directed you to complete and return your acknowledgment of rights within ten (10) days, and also informed you that a failure to exercise your rights or respond within the specified time would constitute a rights waiver. On 6 July 2006, you returned your completed acknowledgment of rights form where you elected in writing to tender your qualified resignation request for a GEN discharge in lieu of administrative show cause proceedings at a Board of Inquiry. Your qualified resignation request, dated 6 July 2006, was appended to your completed acknowledgment of rights form. A notation in your Officer Precedence Record indicated that, on 20 July 2006, the Secretary of the Navy withheld your nomination for promotion to Commander (O-5).

On 19 September 2006, Commander, Naval Personnel Command (CNPC) recommended to the Assistant Secretary of the Navy for Manpower and Reserve Affairs (ASN(M&RA)) that you be separated for misconduct with a GEN characterization of service. On 25 September 2006, ASN(M&RA) approved CNPC's recommendation. Ultimately, in October 2006, you were discharged from the Navy for misconduct with a GEN characterization of service at the rank/grade of O-4.

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) you have taken action for almost 17 years now to improve yourself and become a better person than you were when you committed your error in judgment, (b) you own a business and you

want to proudly call it a Veteran Owned business, and you do not want it for business purposes other than pride, (c) you would like to be able to hire veterans leaving the service in your company, but you cannot do that in good faith knowing you do not have an Honorable discharge, (d) you have carried this burden mentally for 17 years, rightfully so, (e) an upgrade would help you shift your mindset and further advance as a business owner and person if granted. 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. Regarding your discharge upgrade request, the Board determined that your discharge from the Navy with a GEN characterization was warranted. The Board determined that your substantiated misconduct clearly demonstrated you had minimal potential to contribute positively to the Navy as an officer responsible for the care and well-being of enlisted Sailors. The Board also noted that your misconduct and total lack of judgment was not just an isolated incident and the record reflected you engaged in such extramarital misconduct over an extended period of time. The Board also noted that your lack of integrity when questioned by military authorities about your fraternization further compounded an already unfortunate situation. Thus, the Board found that your GEN separation to be appropriate under the totality of the circumstances.

Additionally, the Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade and/or to make any conforming changes to your DD Form 214. 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 OTH or GEN 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 commissioned officer. The Board also determined that the record clearly reflected your repeated misconduct was deliberate and willful and indicated you were unfit for further service. Moreover, the Board noted that the evidence of record did not demonstrate you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions.

Additionally, 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 significant negative aspects of your service outweigh the positive aspects and continues to warrant a GEN 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.



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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,

12/6/2023

