



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

█
Docket No. 9115-23
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 3 November 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 to 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 Navy and began a period of active duty on 25 October 1989. You were transferred to █ on 11 April 1990, incident to a positive human immunodeficiency (HIV) diagnosis, and remained there for medical observation and treatment. On 11 June 1992, you were tried and convicted by a General Court-Martial (GCM), consistent with your pleas, to violations of the Uniform Code of Military Justice (UCMJ) under Article 90, for five specifications, Article 92, for a lesser included offense, and Article 128, for three specifications. These charges related, in primary part, to your decision to engage in sexual activity with partners without first informing them of your positive diagnosis of HIV. You were sentenced to a Dishonorable Discharge (DD), reduction to E-1 with total forfeitures of pay, which were suspended for your dependent child, and confinement. Your DD was executed following a presumptive appellate review of the findings and sentence, and you were discharged on 26 October 1994.

Your first application to the Board was considered on 13 February 2003, in Docket Number 9337-03, wherein you requested a medical discharge incident to your HIV diagnosis. The Board noted that your punitive discharge took precedence and denied your request. Subsequent requests to the Board, in 2013 and 2019, were denied due to lack of new material evidence.

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 to upgrade your discharge to "Honorable" and to change your narrative reason for separation to "Secretarial Authority," as well as your contentions that evidence of your post-discharge character and rehabilitation warrants consideration of a grant on the basis of clemency. 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 GCM, 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. While the Board noted that you are deeply apologetic for your actions and that your numerous character letters reflect that you are, in fact, a different person today than you were 30 years ago, when you were young, in denial of your HIV diagnosis, and feeling stigmatized due to common misconceptions associated with your diagnosis, the Board found that the severity of your offenses substantially outweighed the otherwise favorable evidence of your post-discharge rehabilitation. Considering the significant difference in prognosis with respect to an HIV diagnosis nearly 30 years ago as opposed to now, the Board observed that your misconduct resulted in a substantial and real risk of harm to others. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant a DD. 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 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,

11/27/2023

