




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


Docket No. 9232-23
Ref: Signature Date



Dear 

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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 12 January 2024. 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).

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 Navy and commenced active duty on 26 June 2000. On 25 January 2002, you received non-judicial punishment (NJP) for disobeying a lawful order from a Chief Petty Officer. Additionally, you were issued administrative remarks (Page 13) counseling concerning deficiencies in your performance and/or conduct. You were advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge. However, on 18 February 2002, you again received NJP for false official statement to a Chief Petty Officer. You received a third NJP, on 29 March 2002, for three specifications of disrespect towards a Chief Petty Officer.

Consequently, you were notified of pending administrative separation processing with an Other Than Honorable (OTH) discharge by reason of misconduct due to commission of a serious offense and pattern of misconduct. You elected to make a written statement and obtain copies of documents related to the process, but waived your remaining rights, including your right to consult with legal counsel and request an administrative discharge board (ADB). The Separation Authority subsequently directed your discharge with an OTH characterization of service due to pattern of misconduct and you were so discharged on 11 April 2002.

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 change your discharge characterization of service to Honorable, your desire to have your rank corrected to HN/E3, and your contentions that you had an exemplary military service record for the amount of time you were in the Navy, you graduated in the top 5% of your Hospital Corps School Class, you were pulled out of training and sent to Naval Marine Corps Base ██████████ – ██████████ Medical Clinic—where your only official evaluation conducted was outstanding, you were chosen to serve on board the ██████████ (██████████) which was unheard of without having obtained the Field Medical Service Pin in the HM rate, in the last two months of service you were taken to Captain’s Mast three times and this was not the correct process as you never went to DRB and were not given time to prepare for Captain’s Mast, you were told to be there but not told why, your life has been in shambles because of this undeserved shame/failure which has followed you your entire life, your Chief accused you of being a homosexual after seeing each other at a bar at liberty overseas, and you went to register at the Department of Veterans Affairs hospital in ██████████, ██████████, but were told you could not because you had violated the Don’t Ask Don’t Tell policy even though you did not tell anyone anything about your sexuality. Additionally, the Board noted you checked the “PTSD” and “other mental health” boxes on your application but chose not to respond to the 1 November 2023 letter from the Board requesting evidence in support of your claim. For purposes of clemency and equity consideration, the Board noted you did not provide documentation describing post-service accomplishments or advocacy letters.

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, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact your repeated misconduct had on the good order and discipline of your command. The Board also considered that you were given the opportunity to address your conduct issues but you continued to commit misconduct, which ultimately led to your administrative separation. Regarding your contention you were not taken to DRB prior to NJP, the board noted DRB may be used by a command prior to NJP, but is not required. Further, there is no required amount of time prior to NJP to allow for case preparation. Finally, the Board further noted that you provided no evidence to substantiate your contentions. 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.

Regarding your request to be reinstated to the paygrade of E-3, the Board found that you were properly reduced in paygrade to E-1 as a result of your last two NJPs. Based on your record of misconduct, the Board found no basis to reinstate your paygrade to E-3. Therefore, 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. 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,

1/24/2024

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