



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. 10133-23
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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 15 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, 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).

On 8 April 1999, you enlisted in the Navy with a waiver for a civilian charge of disturbing the peace. On 10 June 1999, you began a period of active duty service. On 8 May 2002, you were convicted by civil authorities of driving with a suspended driver's license. On 29 October 2002, you were honorably discharged and immediately reenlisted. On 20 November 2003, you received nonjudicial punishment (NJP) for failure to obey a lawful order by wrongfully engaging in an inappropriate relationship, and adultery by wrongfully engaging in sexual intercourse on board the ship with a married woman. Consequently, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to commission of a serious offense. Subsequently, you decided to waive your procedural rights. Your commanding officer recommended a General (Under Honorable Conditions) discharge characterization of service. On 23 November 2003, the separation authority approved the recommendation and ordered your

discharge by reason of misconduct due to commission of serious offense. On 23 December 2003, you were so discharged. You previously applied to this Board for a reentry code upgrade. On 20 October 2005, your request was denied.

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 were promised an Honorable discharge characterization upgrade seven years following your separation following your separation from service and (b) your current discharge characterization is affecting your Department of Veterans Affairs benefits. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

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 NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact it had on the good order and discipline of your unit. The Board also considered the aggravating circumstances related to your offense of adultery in that it occurred onboard a naval vessel. The Board concluded you were fortunate not to receive an Other Than Honorable characterization based on the serious nature of your offenses. Further, 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. Finally, the Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. As a result, the Board concluded significant negative aspects of your service outweigh the positive aspects and continues to warrant a General (Under Honorable Conditions) characterization. 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 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 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,

1/12/2024

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Executive Director

Signed by: █