



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

██████████  
Docket No. 10690-23

Ref: Signature Date

██████████  
██████████  
██████████  
██████████  
██████████

Dear ██████████

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 1 March 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 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). Additionally, the Board considered the guidance from the Under Secretary of Defense regarding the Correction of Military Records following Repeal of 10 U.S.C. 654 (Stanley Memo).

You enlisted in the Navy and began a period of active duty on 2 January 1996. In August 1997, a sailor reported to a fellow shipmate that he had encountered you after leaving a bar and that you had offered for him to stay in a hotel room. He further reported that he had been awakened by you in the middle of the night when you had attempted to perform oral sex on him. The sailor to whom he reported this incident observed his general discomfort and concern regarding the incident but related the report in detail in a signed witness statement. Subsequently, in September 1997, Naval Criminal Investigative Service (NCIS) investigated several allegations against you to include this initial allegation as well as an allegation stemming from an incident

wherein you and another sailor were discovered in an official space and essentially unclothed. In the course of the NCIS investigation, you denied homosexual acts or misconduct. On 18 September 1997, you were notified of processing for administrative separation by reason of misconduct due to commission of a serious offense and due to homosexual conduct. You elected to waive your right to consult counsel and to a hearing before an administrative separation board. The following day, you accepted nonjudicial punishment (NJP) for violations of the Uniform Code of Military Justice (UCMJ) under Article 92, for failure to obey a lawful written order by disrobing in the work center and displaying your underclothes; Article 124, for sodomy by force and without consent; and, Article 134, for disorderly conduct. A recommendation for your discharge under Other Than Honorable (OTH) conditions was forwarded to the Chief of Naval Personnel, who approved your discharge on 2 October 1997 for the primary basis of misconduct due to commission of a serious offense. You were so discharged on 21 October 1997.

Your previous application to the Naval Discharge Review Board (NDRB), in which you did not raise any specific issues, was considered on 4 October 1999 and 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 and Stanley Memos. These included, but were not limited to, your desire to upgrade your discharge and change your narrative reason for separation and reentry code to "something less derogatory" as well as your contentions that your post-service accomplishments warrant clemency and your denial of the allegation made against you that you committed, or attempted to commit, sodomy upon another sailor by force and without consent. You argue that pre-existing rumors regarding your sexual orientation caused the sailor who shared the hotel room with you to fabricate a report against you in order to protect himself and deflect rumors because his girlfriend was upset. You further state that you did not contest your separation because you were told that the proceedings would be dragged out and potentially end with your incarceration in the military brig. In totality, you believe that you were targeted solely based upon your sexual orientation and no longer valid in light of policy changes following the repeal of 10 U.S.C. 654, commonly referred to as the "Don't Ask, Don't Tell" (DADT) policy. 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 NJP, 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. The Board meticulously reviewed the statements made during the course of the NCIS investigation into the allegations against you and found that the account of your alleged offense under Article 124, when considered in conjunction with your choice to accept NJP rather than exercise your right to demand trial, was sufficiently credible to constitute misconduct of a nature which constitutes an aggravating factor. Further, the Board noted your original discharge was not based solely on DADT. Therefore, the Board determined you were not entitled to relief under the Stanley memo.

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. While the

