



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

█  
Docket No. 10862-23  
Ref: Signature Date

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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 application on 26 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 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 your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined 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 23 July 2001. On 20 December 2001, you received non-judicial punishment (NJP) for assault consummated by a battery. Approximately one year later, on 1 January 2003, you were arrested by the █, █ Police Department for aggravated robbery of a gold necklace. Due to this arrest, on 6 January 2003, you were notified of your Commanding Officer's (CO) intent to administratively separate you by reason of Misconduct, Commission of a Serious Offense. You consulted with counsel and elected to appear before an administrative discharge board (ADB). Your ADB was held, on 21 February 2003, and resulted in a finding of misconduct with a recommendation you be separated with a General (Under Honorable Conditions) (GEN) characterization of service.

On 28 March 2003, your CO concurred with the ADB recommendation. You were so discharged on 11 April 2003.

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 and your contentions that you received a GEN discharge because you were involved in a civilian legal issue that never went to trial and for which you were not convicted. For purposes of clemency and equity consideration, the Board noted you did not provide advocacy letters or documentation describing post-service accomplishments.

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 NJP and civilian arrest, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that both your NJP and civilian arrest involved physical violence or the potential threat of physical violence. The Board also considered the likely negative impact your misconduct had on the good order and discipline of your command. Finally, the Board considered that your ADB already knew that the civilian case against you had been dropped because the victim had not come forward. The Board determined that the victim's decision not to appear does not diminish the severity of actions that led to your arrest, as described in the police officer's report, or invalidate the conclusion of the ADB. Ultimately, the Board determined you were fortunate to receive a GEN characterization of service.

As a result, the Board concluded your conduct constituted a departure from that expected of a service member and continues to warrant a GEN characterization. Even light of the Wilkie Memo and reviewing the record liberally and 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,

2/16/2024

