

DEPARTMENT OF THE NAVY

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

> Docket No. 836-24 Ref: Signature Date



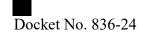
Dear Petitioner:

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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session, considered your application on 14 February 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).

You previously applied to this Board for an upgrade to your characterization of service and change your reentry code. You were denied relief on 25 June 2020. The facts of your case remain substantially unchanged.

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 character of service to Honorable and contention that you applied for a discharge upgrade, and it was approved. For purposes of clemency and equity consideration, the Board noted you provided documentation from the Department of Veterans Affairs (VA) annotating that your military service is "Honorable for VA purposes," but no supporting 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 administrative counseling and non-judicial punishments, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded your misconduct showed a complete disregard for military authority and regulations. The Board also considered the likely negative impact your conduct had on the good order and discipline of your command. Further, the Board found that your misconduct was intentional and made you unsuitable for continued naval service. Furthermore, the Board also determined that the evidence of record did not demonstrate that you were not responsible for your conduct or that you should otherwise not be held accountable for your actions. The Board noted that you were provided opportunities to correct your conduct deficiencies during your service, however, you continued to commit misconduct. Your administrative counseling, multiple periods of unauthorized absence, and violation of orders and regulations, not only showed a pattern of misconduct but were likely sufficiently serious to negatively affect the good order and discipline of your command. Therefore, the Board found your record of misconduct more than sufficient to support your administrative separation and assigned characterization of service. Finally, regarding your contention, decisions reached by the VA to determine if a former service members rate certain VA benefits do not affect previous discharge decisions made by the Navy since the criteria used by the VA in determining whether a former service member is eligible for benefits are different than that used by the Navy when determining a member's discharge characterization of service. As a result, the Board determined your conduct constituted a significant departure from that expected of a service member and continues to warrant an other than honorable characterization. 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 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.

