



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

█  
Docket No: 3632-19  
Ref: Signature Date

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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 the entire record, the Board for Correction of Naval Records (Board) found the evidence submitted was insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

A three-member panel of the Board, sitting in executive session, considered your application on 7 May 2020. The names and votes of the members of the panel 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, as well as applicable statutes, regulations, and policies.

You originally enlisted in the Navy on 19 April 2010. After being disqualified from the Personal Reliability Program for having three alcohol-related incidents, you completed Level I outpatient alcohol rehabilitation treatment on 10 January 2013. On 5 March 2017, you were arrested by █ authorities after colliding with a highway barrier and cited with driving a vehicle while exceeding the legal limit of blood alcohol concentration. On 27 April 2017, you went to non-judicial punishment (NJP) for unauthorized absence lasting three days, and for the drunken/reckless operation of a vehicle. You received a reduction in rank, restriction, and extra duties as punishment. You did not appeal your punishment.

On 17 November 2017, your command subsequently notified you that you were being dual processed for misconduct due to the commission of a serious offense and alcohol rehabilitation failure. The serious offenses that specifically formed the basis for separation were: (a) your civilian arrest and NJP for DUI, (b) a sexual assault as evidenced by an August 2017 NCIS investigation and evidentiary package, and (c) adultery as evidenced by the same NCIS investigation. You expressly waived in writing your rights to consult with counsel, submit statements to the separation authority, and to request an administrative separation board.

Ultimately, on 19 January 2018, you were discharged from the Navy with an Under Other Than Honorable Conditions (OTH) characterization of service, and assigned an “RE-4” reentry code.

The Board carefully weighed all potentially mitigating factors, including your contentions that you never attended a court-martial proceeding or were charged with sexual assault. However, the Board found that your contentions and mitigating factors were not sufficient to warrant: (a) removing or redacting any of your service records involving any sexual assault, (b) upgrading your discharge, or (c) granting any other relief in your case given the overall seriousness of your misconduct and disregard for good order and discipline while on active duty. The Board noted that your Commanding Officer, after reviewing the relevant NCIS investigation, determined by a preponderance of the evidence that you engaged in wrongful sexual contact with someone who was incapable of consenting due to alcohol impairment, and that you were married at the time you had sexual intercourse with her. The Board found that this misconduct fell within the scope of Article 120 of the Uniform Code of Military Justice. Thus, the Board determined that including sexual assault and adultery as underlying offenses to process you for administrative separation were proper and in compliance with all Navy directives and policy at the time of your discharge. The Board also noted the record shows you were notified of and waived your procedural rights in connection with your administrative separation. In doing so, you gave up your first and best opportunity to factually dispute and contest the bases for your separation, advocate for retention, and/or argue for a more favorable characterization of service. Accordingly, the Board concluded that your Navy service records and DD Form 214 maintained by the Department of the Navy (DoN) contain no known errors, determined that there was no injustice in your discharge, and found that your serious misconduct merited your receipt of an OTH discharge.

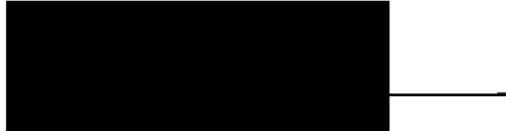
The Board also noted that the FBI Records Modification Form you tendered is not maintained on any DoN databases or records depositories. As a result, the Board has no authority to order corrections be made to such records, and any requests to modify FBI-maintained records will need to be directed to the appropriate FBI adjudicating authority. Notwithstanding, the Board observed that the information contained on such document appears substantially accurate in terms of describing the ultimate disposition in your case.

Additionally, the Board reviewed your application under the recent guidance provided in the Under Secretary of Defense’s memorandum dated 25 July 2018 entitled, “Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations” (USD Memo). The purpose of the USD Memo is to ease the process for veterans seeking redress and assist Boards for Correction of Military/Naval Records “in determining whether relief is warranted on the basis of equity, injustice, or clemency.” The USD Memo noted that “increasing attention is being paid to...the circumstances under which citizens should be considered for second chances and the restoration of rights forfeited,” and that “BCM/NRs have the authority to upgrade discharges or correct military records to ensure fundamental fairness.” The USD Memo sets clear standards and principles to guide BCM/NRs in application of their equitable relief authority, and further explains that boards shall consider a number of factors to determine whether to grant relief. However, even in light of the USD Memo, the Board still concluded that, given the totality of the circumstances, your request does not merit relief.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. 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,

5/29/2020

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Deputy Director

Signed by: 