



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. 5809-23
Ref: Signature Date

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Dear ■■■■■■

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 8 May 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. The Board also considered the advisory opinion (AO) furnished by the Navy Pay and Personnel Support Center (NPPSC) letter, dated 31 August 2023. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Navy and began a period of active duty on 10 October 2019. On 12 January 2021, you were evaluated and diagnosed with an adjustment disorder and recommended for administrative separation from the Navy.

Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file. Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. The record shows on 6 April 2021, the separation authority directed your administrative discharge from the Navy

with an Honorable characterization of service by reason of condition, not a disability. Prior to your administrative separation, on 28 July 2022, you were convicted by a special court-martial (SPCM) of wrongfully broadcasting or distributing intimate visual images. As punishment, you were sentenced to seven days confinement and reduction in rank to the paygrade of E-1. Ultimately, the sentence was approved at all levels of review. On 3 March 2023, you were discharged.

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 reinstate your paygrade to E-3 and contention that you desire an accurate representation of your rank. For purposes of clemency and equity consideration, the Board considered the supporting documentation you provided in support of your application.

As part of the Board's review, the Board considered the AO provided by NPPC. The AO stated in pertinent part:

Navy Pay and Personnel Support Center (NPPSC) reviewed the case files and supporting documents. Member's special court martial states that member entered into a plea agreement in which member was reduced in paygrade to E-1 effective 28 July 2022. All supporting documentation supports member being reduced in rate to E-1 by Special Court-Martial.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. The Board did not find evidence of an error or injustice that warrants reinstating your rank to E-3. The Board substantially concurred with the AO that all supporting documentation supports that you were reduced in rank to E-1 by a SPCM. Therefore, the Board discerned no impropriety or inequity in your paygrade at the time of your discharge. 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 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,

5/22/2024

