



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. 1209-24
Ref: Signature Date

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Dear Petitioner,

This is in reference to your application for correction of your husband's (service member (SM)) naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of SM's 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 21 August 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 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.

SM entered active duty with the Navy on 10 July 1989. On 28 March 1990 and 11 April 1990, he received non-judicial punishment (NJP) for three specifications of unauthorized absence (UA) and assault. On 11 December 1991, he received NJP for disobeying a lawful order. On 18 February 1992, he received NJP for one day of UA. Starting on 24 May 1992, he went into a UA status until 29 May 1992. On 15 June 1992, civil authorities convicted him of spousal abuse. Consequently, he was notified of pending administrative separation action by reason of misconduct due to a pattern of misconduct, commission of a serious offence, and civil

conviction. After waiving his rights, he went into a UA status for an additional three days. On 20 July 1992, his commanding officer (CO) forwarded his package to the separation authority (SA) recommending his discharge with an Other Than Honorable (OTH) characterization of service. Starting on 23 July 1992, he again went into a UA status. On 13 August 1992, the SA approved the CO's recommendation and directed an OTH characterization of service by reason of misconduct due to a pattern of misconduct. On 18 September 1992, he was so discharged in absentia.

Post-discharge, your husband applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. On 9 November 1994, the NDRB denied his request after determining that his discharge was proper as issued.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in his case in accordance with the Wilkie Memo. These included, but were not limited to, your desire to upgrade SM's discharge to Honorable and contentions that he was not provided proper guidance when discharged and legal told him to leave the ship because he would be discharged anyways due to the Navy cutting back on personnel. The Board also noted you checked the "PTSD" box on your application but did not respond to the 8 February 2024 letter from the Board requesting supporting evidence for your claim. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing SM's post-service accomplishments or advocacy letters.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that SM's misconduct, as evidenced by his NJPs, UAs, and civil conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of his misconduct and the likely negative impact his conduct had on the good order and discipline of his command. Further, the Board noted that there is no evidence in SM's record, and you submitted none, to substantiate your contentions that he was not provided proper guidance and legal told him to leave the ship. Therefore, the Board was not persuaded by your contentions.

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. 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,

9/11/2024

