



to consult counsel, submit a statement, or have your case heard by an administrative discharge board (ADB). The Separation Authority subsequently directed your discharge with an OTH characterization of service, and you were so discharged on 18 January 2000.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 30 November 2006, based on their determination that your discharge was proper as issued.

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 were wrongly accused of falsely claiming Basic Allowance for Quarters (BAQ) for your son, you married an active duty Marine on 6 July 1997 who claimed you and your son as dependents, you and your husband separated on 12 February 1998 but did not divorce, he did not provide financial assistance to you or your son, you did not know you could not claim BAQ for your son when you enlisted, and that the command did not perform due diligence to verify your marital status. Additionally, the Board noted you checked the "PTSD," "Sexual Assault/Harassment," and "Reprisal/Whistleblower" boxes on your application and responded to the 4 April 2024 letter from the Board requesting evidence in support of your claim by submitting a virtual psychiatry summary that indicated you were prescribed medication and a follow-up appointment but provided no other information relevant to your contentions. For purposes of clemency and equity consideration, the Board considered your statement, advocacy letters, and post-service accomplishment documentation you provided.

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 SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact your conduct had on the good order and discipline of your command. The Board noted you provided no evidence, other than your personal statement, to substantiate your contention that you were wrongly accused of falsely claiming BAQ for your son. The Board noted that your statement and the evidence of record supports the finding that both you and your husband were claiming your son as a dependent and that your husband was serving on active duty when you claimed him as a dependent. The Board also noted that it was your responsibility to inform your command that your husband was active-duty military, was claiming you and your son as dependents, you and your husband were separated when you began active duty, and you had sole financial responsibility for and custody of your son. Therefore, the Board determined the presumption of regularity applies with regard to your SCM conviction. 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.

Additionally, the Board noted that by refusing to sign your administrative separation processing statement of awareness, you waived your rights to consult counsel, submit a statement, or have your case heard by an administrative discharge board (ADB), which was your chance for retention, and opportunity to earn a better characterization of service.

Finally, the Board determined insufficient evidence exists to support your claims of a mental health condition affecting your misconduct. The Board considered the evidence you provided

but noted that you commenced your BAQ fraud upon entering the Navy. Therefore, absent an explanation how a mental health condition impacted your enlistment process, the Board concluded no evidence exists to support your contentions. Similarly, the Board found no evidence to support your claim of a reprisal or whistleblower violation.

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. While the Board carefully considered the evidence you submitted in mitigation and commends you on your post-discharge accomplishments, 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 that your request does not merit relief.

The Board determined there was insufficient evidence to conclude you were the victim of reprisal in violation of 10 USC 1034. 10 USC 1034 provides the right to request Secretary of Defense review of cases with substantiated reprisal allegations where the Secretary of the Navy's follow-on corrective or disciplinary actions are at issue. Additionally, in accordance with DoD policy you have the right to request review of the Secretary of the Navy's decision regardless of whether your reprisal allegation was substantiated or non-substantiated. Your written request must show by clear and convincing evidence that the Secretary of the Navy acted arbitrarily, capriciously, or contrary to law. This is not a de novo review and under 10 USC 1034(c) the Secretary of Defense cannot review issues that do not involve reprisal. You must file within 90 days of receipt of this letter to the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), Office of Legal Policy, █.

Your written request must contain your full name, grade/rank, duty status, duty title, organization, duty location, mailing address, and telephone number; a copy of your BCNR application and final decisional documents; and, a statement of the specific reasons why you are not satisfied with this decision and the specific remedy or relief requested. Your request must be based on factual allegations or evidence previously presented to the BCNR, therefore, please also include previously presented documentation that supports your statements.

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,

9/19/2024

