



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

█
Docket No. 2375-24
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.

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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 19 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 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, 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.

You enlisted in the U.S. Navy and began a period of active duty on 27 December 1993. During your enlistment, you received a letter of appreciation for outstanding mission accomplishment. On 11 May 1995, you were convicted by a special court-martial (SPCM) of three specifications of carnal knowledge and of sodomy with a child under the age of 16 years. As punishment, you were sentenced to confinement for 90 days, reduction in rank to E-1, and forfeiture of \$500.00 pay per month for three months. On 29 June 1995, the convening authority suspended any confinement in excess of 60 days for a six month. According to your SPCM transcript, you made a sworn statement stating, "In December of 1994 she was 15 years old. I knew this

because she told me. She told me before we had sexual intercourse.” Furthermore, on 13 June 1995, you submitted a clemency request admitting guilt to your actions.

Consequently, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to commission of a serious offense (COSO). You elected your right to consult with counsel and waived your right to present your case to an administrative discharge board. The commanding officer forwarded your administrative separation package to the separation authority (SA) recommending your administrative discharge from the Navy with an Other Than Honorable (OTH) characterization of service adding, “The servicemember admitted to acts of carnal knowledge upon a 15-year old female whom he had known only 2 days.” The SA directed your OTH discharge from the Navy by reason of misconduct due to COSO and, on 21 December 1995, you were so 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 upgrade your discharge character of service and your contentions that: (1) while grappling with severe depression caused by a previous brain injury, you pursued multiple relationships in search of happiness, (2) your naval career was exemplary until you met a woman at a bar who ended up staying at your apartment for three days, (3) since you met her at a bar, you assumed she was 18 years old and had no idea she was there illegally with a fake ID, (4) her parents were aware that she had frequented bars and chose not to press charges against you, but the Navy did, (5) it was unfair for you to be charged with this crime, as you met her in a bar where the minimum age for entry was 18, (6) there was no way for you to know she was underage, (7) you were 19-years old and starting your career as a hospital corpsman, (8) how could you be held accountable for actions beyond the expectation that everyone in the establishment met the legal age of entry, (9) you wanted to demonstrate your core values, so you chose not to hire an attorney but you were sent to federal prison, where you developed PTSD, (10) you are a pillar of your community, own a local business, and interact with 50,000 people a year, and (11) your time in the Navy was cut short through no fault of your own, as you had no idea she was in the bar illegally. Additionally, The Board noted you checked the “Other Mental Health,” box on your application but chose not to respond to the request from the Board requesting evidence in support of your claim. The Board further noted you did not provide documentation for clemency and equity consideration.

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 SPCM conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. The Board also considered the negative impact your conduct likely had on the good order and discipline of your command and the likely discrediting effect your conduct had on the Navy. Additionally, the Board determined the record reflected that your misconduct was intentional and willful and demonstrated you were unfit for further service. Further, the Board was not persuaded by your contentions regarding lack of knowledge of the minor’s age and observed that your arguments of innocence directly contradict your statement under oath. Finally, the Board also determined that the evidence of record did not

demonstrate that you were not mentally responsible for your conduct or that you should not be held accountable for your actions.

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 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,

9/9/2024

