



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

█
Docket No. 2928-24
Ref: Signature Date

█
█
█
█
█

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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 6 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 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).

You enlisted in the United States Navy commenced a period of active duty on 5 May 2003. From 10 - 12 November 2003, you were absent without authorization from your command. On 3 March 2004, you received non-judicial punishment (NJP) for violating Uniform Code of Military Justice (UCMJ) Article 90, for willfully disobeying a superior commissioned officer, and Article 107, for making a false official statement. You were formally counseled due to this misconduct and notified that any further infractions could result in disciplinary action or administrative separation processing. On 21 April 2004, you were convicted in civilian criminal court of violating Revised Code of █ 9A.36.041 (Domestic Assault 4th Degree) and Revised Code of █ 9A.46.060 (Domestic Violence/Harassment). You were sentenced to fines,

confinement (all but one day suspended), and probation. On 28 April 2004, you received your second NJP for violating UCMJ Article 86, for a 10-day period of unauthorized absence. On 30 April 2004, you received your third NJP for violating UCMJ Article 92, for dereliction of duty. You did not appeal any of these NJPs. On 14 June 2004, you were found guilty at Summary Court Martial (SCM) of violating UCMJ Article 86, for three specifications of failure to go to an appointed place of duty (restricted muster), and Article 128, for assault consummated by a battery upon a child under age 16. You were sentenced to 30 days confinement.

On 9 July 2004, you were notified that you were being processed for an administrative discharge by reason of pattern of misconduct and commission of a serious offense. After consulting with qualified counsel, you waived your right to present written or oral matters in your defense. On 2 August 2004, you were discharged from the Navy based on your pattern of misconduct and assigned an Other Than Honorable (OTH) characterization of service and an RE- 4 reentry code.

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: (1) your desire to upgrade your discharge characterization and basis for separation, (2) your assertion that you were young and struggled with the pressures of having a family with a disabled child in addition to the demands of military service, and (3) your contention that you have learned to balance your responsibilities and have gained custody of your children. For purposes of clemency and equity consideration, the Board noted that you provided evidence related to your post-service accomplishments and character letters.

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 NJPs, civilian conviction, and SCM conviction, outweighed these mitigating factors. The Board considered the seriousness of your repeated misconduct and the fact that it involved acts of violence. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command. The Board determined that such misconduct is contrary to the Navy core values and policy, renders such Sailor unfit for duty, and poses an unnecessary risk to the safety of fellow service members. Additionally, such misconduct places an undue burden on your chain of command and negatively impacts mission accomplishment. A characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a service member. The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board highlighted that your characterization was based on a series of infractions, not a one-time incident, which spanned the entirety of your time in service. Further, the Board considered you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct. For these reasons, the Board concluded that your assigned OTH and misconduct basis for separation remain appropriate in your case.

Therefore, while the Board carefully considered the evidence you submitted in mitigation and commends you for 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.

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,

5/17/2024

