



**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. 4661-24  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 15 July 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 on the evidence of record.

During your enlistment processing you answered "yes" to "I have abused narcotics, dangerous drugs, or marijuana (as defined above)." You enlisted in the Navy and commenced a period of active duty on 27 May 1980. Subsequently, you extended your enlistment twice.

On 24 June 1983, you received nonjudicial punishment (NJP) for failing to obey a lawful order. You received a second NJP, on 14 September 1984, for dereliction of duty. On 15 November 1984, you received a third NJP for two specifications of violating a lawful order by switching your urine sample during a unit sweep, failing to provide a urine sample, and false official statement. As a result, you were given a command directed urinalysis and tested positive for THC, amphetamines, and methamphetamines, and placed on your command's 2 X 4 urinary

surveillance program. While on the program you tested positive twice for amphetamines and methamphetamines, once for cocaine, and twice for THC. On 6 November 1984, a medical evaluation determined you were not drug dependent and recommended you be separated. Consequently, you were notified of your pending administrative processing, at which time you waived your rights to consult with counsel, have your case heard before an administrative discharge board, and make a written statement. Your commanding officer recommended you be discharged with an Other Than Honorable (OTH) characterization of service adding, “[s]he was found guilty at Captain’s Mast of substituting another person’s urine sample for her own during a command unit sweep. When given a command directed urine test after the command learned of her alleged substitution, [Petitioner] tested positive for THC/AMP/METHAMP. Since being placed on the 2 X 4 program, she has tested positive for a different substance each time...[Petitioner] has been a burden to the command since checking onboard in Sep 83. Her division officer’s notebook contains numerous counseling reports on [Petitioner’s] personal behavior and attitude. She has been given every possible chance to improve but she has not overcome her deficiencies.” Ultimately, on 13 December 1984, you were discharged with an OTH by reason of pattern-frequent involvement of a discreditable nature with civil or military authorities.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request on, 18 May 1985, after determining 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 upgrade your discharge to and your contentions that: (1) your misconduct is directly related to not being able to serve as an openly gay female, (2) as a result of an investigation into your relations with another female and your fear or your sexuality being discovered you turned to drugs to numb your feelings, (3) you thought your discharge would be upgraded to Honorable after six months, (4) you served proudly and honorably, and (5) your post-service accomplishments should be considered. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

After a thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it included drug offenses. The Board determined that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. The Board noted that illegal drug use in any form is still against the Department of Defense regulations and not permitted for recreational use while serving in the military.

Additionally, the Board carefully considered your contention that you were unable to serve as an openly gay female. Since you raised the issue of homosexuality, the Board reviewed your record in light of current guidance regarding the repeal of the “Don’t Ask, Don’t Tell” (DADT) policy. Ultimately, the Board determined the current DADT repeal guidance is inapplicable to your case

since you were not identified as homosexual nor processed for homosexuality, but solely discharged based on unrelated misconduct. Lastly, the Board noted there is no provision of federal law or in Navy and Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years.

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. While the Board commends your post-discharge accomplishments and carefully considered the evidence you submitted in mitigation, 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 the 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 is attached 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,

7/31/2024

