



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. 5167-24
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 28 June 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 to the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice or clemency determinations (Wilkie Memo).

You previously applied to the Board for relief and were denied on 27 October 2023. The facts of your case remain substantially unchanged. However, the Board noted you provided General Court-Martial (GCM) records not previously available for review.

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 "Honorable" and change your narrative reason for separation to "Secretarial Authority." You contend that your punitive discharge has satisfied its purpose in light of your character and accomplishments over the past 20 years since your discharge. In addition to the clemency and equity evidence previously submitted for consideration in your recently considered request, the Board noted you submitted additional information regarding the scope and nature of your previous employment in

the firearms training industry, to include for military and law enforcement, your extensive work in explosives, wireline, and offshore engineering, your current efforts as the owner of a dog obedience business which works with non-profit organizations to rescue working dogs from shelters and rehabilitation them for placement as service dogs, and the strong support your co-workers and friends documented in letters of support. You also provided your previous firearms and explosive licenses and a criminal history background check.

After 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 GCM, 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 noted, foremost, that its statutory grant of authority to correct military records does not extend to altering the results of court-martial trials. As such, your conviction for multiple offenses of felony assault is a matter of record and would remain unaltered regardless of a change to your characterization of service. Likewise, any resulting legal consequences of that conviction, such as potential applicability of the Lautenberg Amendment, would also continue to apply regardless of a change to your characterization of service. Notwithstanding, the Board again determined that your conviction and assigned characterization of service remains appropriate in light of your brutal assault against the victim in your case.

As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant a Bad Conduct Discharge. While the Board carefully considered the evidence you submitted in mitigation and commends you for your post-discharge rehabilitation, 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,

7/20/2024

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