

## **DEPARTMENT OF THE NAVY**

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

> Docket No. 5376-24 Ref: Signature Date

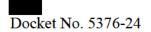
## Dear Petitioner:

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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 3 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 based on the evidence of record.

Prior to entry onto active duty, there was a review of your body marking(s) and it was determined that they are in compliance with regulations. On 6 April 2006, you were issued a counseling warning and acknowledged that if you obtained any additional body art/markings applied to your body while in the Delayed Entry Program (DEP), it could result in DEP discharge. You enlisted in the U.S. Navy and began a period of active duty on 6 April 2006. Upon entry onto active duty, you were granted a waiver for non-minor misdemeanor. You also were granted a medical waiver for diminished movement of your left thumb.



You were notified of administrative separation processing for misconduct commission of a serious offense due to your non-compliance with the instruction on tattoos. After you waived your rights, the Commanding Officer (CO) directed you be discharged with a General (Under Honorable Conditions) (GEN) characterization. You were so discharged on 1 December 2008.

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 for a discharge upgrade and contention that you were dropped out of the Navy for an unauthorized tattoos. You further contend that your tattoos were not offensive but it was at the time the Navy was cutting down on tattoos and that tattoos are allowed today. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

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 failure to adhere to the Navy's tattoo policy, 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 considered that you were on notice of the regulation on tattoos and that you knowingly violated that regulation. Finally, the Board determined you already received a large measure of clemency when you were assigned a GEN characterization of service despite your intentional misconduct.

As a result, the Board concluded significant negative aspects of your service outweigh the positive aspects and continues to warrant a GEN 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 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.

