



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

█  
Docket No. 5447-24  
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 29 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).

You enlisted in the Navy and commenced a period of active duty on 3 March 1988. On 20 May 1988, you were issued administrative remarks retaining you in the naval service despite your defective enlistment and induction due to fraudulent entry into the naval service for failing to disclose prior service involvement with civil authorities. Additionally, you were advised that further deficiencies in your performance and/or conduct may result in processing for administrative separation. On 22 November 1988, your security clearance was revoked for pre-service arrests for theft by receiving, shoplifting, and child abandonment, as well as continued failure to pay child support. Although afforded an opportunity to submit an appeal or statement you chose not to do so. Further, you were disenrolled from radioman accession school due to denial of security clearance. On 4 June 1989, you were found guilty at a general court-martial (GCM) of rape and sentenced to be reduced in rank to E-1, confinement for one year, forfeiture of \$350.00 pay per month for one year, and a Bad Conduct Discharge (BCD). After completion of your appellate review, you were so discharged on 20 August 1991<sup>1</sup>.

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<sup>1</sup> Your OMPF contains a DD Form 214 from another service member. However, your service dates and punitive discharge were documented in your record.

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 and contentions that: (1) you were charged with sodomy for a consensual act with a female friend, (2) since the incident you have not had any problems with the U.S. Navy, (3) you were 20 years-old and would like your age to be considered, (4) you appreciate the training you received during your service and now, at the age of 55, you would like your military record to reflect the core values you were taught, and (5) that you continue to use these values in your life, including your willingness to follow rules. Additionally, the Board noted you checked the "PTSD" box on your application but chose not to respond to the 20 May 2024 letter from the Board requesting evidence in support of your claim. For purposes of clemency and equity consideration, the Board noted you provided a personal statement.

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. Further, the Board considered the likely negative effect your conduct had on the good order and discipline of your unit. Additionally, the Board noted you provided no evidence, other than your statement, to substantiate your contention that you were convicted of consensual sodomy vice rape. Lastly, the Board felt your record clearly reflected your willful misconduct and demonstrated you were unfit for further service.

As a result, the Board concluded your conduct constituted a significant departure of that expected of a service member and continues to warrant a BCD characterization. Even in light of the Wilkie Memo and after 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 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,

8/23/2024

