



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

██████████  
Docket No. 5633-24  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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.

Because your application was submitted with new contentions not previously considered, the Board found it in the interest of justice to review your application. Your current request has been carefully examined by a three-member panel, sitting in executive session on 24 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.

You previously applied to this Board for a discharge upgrade and were denied on 29 June 2022. The facts of your case remain substantially unchanged.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilke Memo. These included, but were not limited to, your desire to change your discharge characterization of service and your contentions that the SJA memo states you appeared before an administrative discharge board (ADB) but you were not there and did not have an opportunity to address the

ADB or make any statement in your own defense. In support of your application, for purposes of clemency and equity consideration, the Board noted you provided your affidavit, service record docs including the record of your ADB, and advocacy letters describing post-discharge good character and accomplishments.

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 three NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved indecent assault. Indecent assault is completely unacceptable, contrary to military core values and policy, renders such members unfit for duty, and poses a direct threat to the trust and safety of their fellow service members. Further, as an egregious violation of trust, it irreparably damages unit cohesion. Although minor in comparison to indecent assault, the Board also considered the likely negative impact your repeated misconduct had on the good order and discipline of your command. Finally, the Board noted that you were given opportunities to address your conduct issues, but you continued to commit misconduct, which ultimately led to your ADB and unfavorable separation. Regarding your contention you did not appear before the ADB and were not afforded an opportunity to defend yourself, the Board found your Official Military Personnel File (OMPF) clearly shows otherwise. Your OMPF contains documents indicated you were not only present at your ADB, but you provided a sworn statement. Therefore, the Board was not persuaded by your contention that your due process rights were violated. Lastly the Board believed that considerable clemency was extended to you when you were administratively separated rather than tried at a court-martial. The indecent assault you committed, under current military policy, would likely have been investigated and charged as a sexual crime under Article 120 of the Uniform Code of Military Justice, a process which would have carried great risk for you rather than the leniency which the board believes you received.

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 characterization. While the Board carefully considered the evidence you submitted in mitigation and commends 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,

8/27/2024

