



**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. 6407-24  
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.

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 9 September 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 active duty on 2 September 1998. On 7 March 2002, you received non-judicial punishment (NJP) for failing to submit a dependency care certificate on time. Additionally, you were issued an administrative remarks (Page 13) counseling concerning deficiencies in your performance and/or conduct. You were advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge. Despite this, on 16 May 2002, you again received NJP for failure to go to your appointed place of duty.

Consequently, you were notified of pending administrative separation processing with a General Under Honorable Conditions (GEN) discharge by reason of misconduct due to pattern of misconduct and commission of a serious offense. You elected to consult with legal counsel and

were not eligible for an administrative discharge board. Ultimately, you were discharged with a GEN discharge due to pattern of misconduct on 21 June 2002.

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 change your narrative reason for separation. You contend that the Board that the Navy committed error when you were disciplined for not being at your appointed place of duty because you had a medical waiver, and that the Board should consider all factors in your case, including your life as single father in the military and your continued excellence after service. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application, including your legal brief, excerpts from your service and medical records, your personal statement, and advocacy letters and accolades.

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 NJPs, outweighed these mitigating factors. In making this finding, the Board considered your inability to conform with basic requirements of a servicemember, despite clear instruction to do so, such as completing and submitting necessary paperwork. Further, the Board noted the comments of your commanding officer (CO) in his endorsement of your separation and considered the negative impact your conduct had on the good order and discipline and mission of your unit. Your CO stated in pertinent part:

[Petitioner] has chosen to use his status as a single parent as a pretext for not performing his military duties. His Department has been extremely accommodating and have given him every opportunity to take the steps necessary to take care of his family. [Petitioner] is unwilling to make any effort to comply with Navy policy on care of dependents. He also has become a disruptive presence within Combat Systems. After numerous excuses about not submitting a dependency certificate, he was counseled by hi department head. [Petitioner] was specifically told that if he could not comply he merely had to annotate the certificate. He disregarded a direct order from a Commander, he has become a burden to his chain of command and has proven to be untruthful.

Ultimately, the Board believed that considerable clemency was already extended to you when you were notified with a GEN discharge when your misconduct could have warranted a less desirable characterization. As detailed in your CO's comments, you were given every opportunity to correct your conduct deficiencies but chose to continue your misconduct. Therefore, the Board was not persuaded by your arguments for mitigation of your misconduct.

As a result, the Board concluded significant negative aspects of your service outweigh the positive aspects and continues to warrant a GEN characterization. While the Board carefully considered the evidence you submitted in mitigation and commends you for your post-service character and 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. 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,

9/18/2024

