



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. 7071-24
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 2 August 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 this 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 Department of the Navy's current policies, standards, and procedures for correction of military records following the "don't ask, don't tell" (DADT) repeal of 10 U.S.C. 654, and 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 enlisted in the Navy and commenced active duty on 27 December 2000. On 19 March 2001, you commenced a period of unauthorized absence (UA) that ended with your surrender on 6 April 2001 and non-judicial punishment (NJP). Thereafter, on 9 April 2001, you received an administrative counseling and warning entry (Page 13), for UA.

On 3 May 2001, you issued a statement to your commanding officer admitting to your homosexuality. Consequently, you were notified of pending administrative separation

processing with a General (Under Honorable Conditions) (GEN) discharge by reason of homosexual conduct. You waived your rights in relation to the process, including your right to consult counsel and elect an administrative discharge board. Ultimately, you were discharged with a GEN characterization of service, on 29 June 2001, by reason of “Homosexual Conduct Admission.”

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) requesting an upgrade of discharge and contending you were not and had never been a homosexual. The NDRB denied your request for an upgrade, on 20 May 2015, based in their determination that your discharge was proper as issued. However, the NDRB directed your narrative reason for separation be changed from “Homosexual Conduct Admission” to “Secretarial Authority.”

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 to Honorable, and your contentions that you were discharged solely due to Don’t Ask Don’t Tell, you tried to reenlist in the military in 2013 but were denied due to the reentry code on your DD Form 214, and you desire veterans’ benefits. For the purposes of clemency and equity, you provided copies of your Master of Education Degree, Bachelor’s Degree of University Studies, and your ██████████ School Administrator Certificate.

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 your NJPs, outweighed these mitigating factors. The Department of the Navy’s current policies, standards, and procedures for correction of military records following the “don’t ask, don’t tell” (DADT) repeal of 10 U.S.C. 654 provides service Discharge Review Boards with the guidance to normally grant requests to change the characterization of service to “Honorable” when the original discharge was based solely on DADT or a similar policy in place prior to enactment of it and there are no aggravating factors in the record, such as misconduct. In your case, the Board determined your period of UA and resulting NJP qualified as an aggravating factor when weighed against your brief period of active duty service.

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 on 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,

8/28/2024

