



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. 7074-24
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 evidence 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 of the Board, sitting in executive session on 27 November 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 twice previously applied to this Board for a discharge upgrade and were denied on 9 December 2022 and 11 December 2023. 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 Wilkie Memo. These included, but were not limited to, your desire for a discharge upgrade and contentions that you were discriminated against based on your sexual preference and the Don't Ask Don't Tell (DADT) policy, you were singled out, and you treated unfairly. The Board noted you checked the "Other Mental Health," "Sexual Assault/Harassment," and "DADT" boxes on your application but did not respond to the Board's request for supporting evidence of your claim. 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 that your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your two non-judicial punishments, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included drug offense. The Board determined that illegal drug use and possession by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. Additionally, the Board noted you provided no evidence, other than your statement, to substantiate your contentions. Further, the Board noted you entered the Navy with a history of drug abuse and were given an opportunity to correct your conduct deficiencies but chose to continue to commit misconduct; which ultimately led to your OTH discharge.

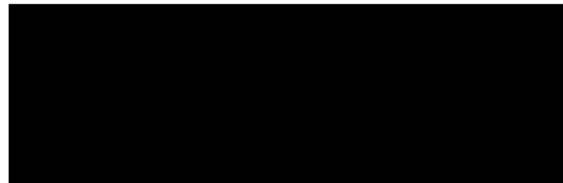
Regarding your contention that you deserve relief based on unfair treatment due to your sexuality¹, the Board considered the circumstances of your case under the current guidance following the “don’t ask, don’t tell” (DADT) repeal of 10 U.S.C. 654. The guidance directs this Board to consider granting relief in cases where 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 its review of your record, the Board noted that you were processed solely for your pattern of misconduct and had substantial aggravating factors in your record. Therefore, the Board determined you are not entitled to relief under the existing guidance.

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. 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,

12/19/2024



¹ The Board noted that you did not raise this issue with your previous applications to the Naval Discharge Review Board and this Board. In your NDRB application, you asserted that you committed misconduct because you could “get away with everything.” In your previous applications to this Board, you argued that your mental health conditions affected your conduct.