



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. 7135-24

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 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, 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).

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) 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 Reserve and began a period of active duty on 30 December 1992. On 3 May 1998, you were honorably discharged from the Navy Reserves by reason of reenlistment in the Navy. On 4 May 1998, you began a period of active duty service. On 1 May 2002, you were honorably discharged by reason of immediate reenlistment. On 2 May 2002, you began a second period of active duty service.

On 19 March 2007, you received nonjudicial punishment (NJP) for driving under the influence. Consequently, you were counseled concerning drunken operation of a vehicle and advised that

failure to take corrective action could result in administrative separation. On 10 January 2008, you received a second NJP for driving under the influence.

Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Your Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that you were separated from the Navy, on 22 February 2008, with a General (Under Honorable Conditions) (GEN) characterization of service, your narrative reason for separation is "Pattern of Misconduct" your separation code is "HKA," and your reenlistment code is "RE-4." Your separation code is consistent with a discharge due to pattern of misconduct.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for relief. The NDRB denied your request, on 1 November 2011, after determining your discharge was proper as issued.

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 change to your reentry code. You contend that: (a) your current discharge status is hindering your prospects for reenlisting in the Navy, (b) you assumed responsibility for your actions and have made significant efforts towards personal rehabilitation, (c) your post discharge actions demonstrate a sincere commitment to develop professionally by maintaining your language skills as a freelance translator and completing a bachelor's degree, (d) you would be an asset to the Navy in fulfilling its mission. For purposes of clemency and equity consideration, the Board considered the evidence you submitted in support of your application.

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 the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. The Board also observed that you were given an opportunity to correct your conduct issues but chose to continue to commit misconduct. Finally, the Board noted you were assigned a GEN characterization of service despite the seriousness of your two DUI offenses. Therefore, the Board determined you already received a large measure of clemency from the Navy.

As a result, the Board concluded significant negative aspects of your service outweigh the positive aspects and continues to warrant a GEN characterization and RE-4 reentry code. While the Board carefully considered the evidence you submitted in mitigation and commends you on your post-discharge rehabilitation, 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 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 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,

9/30/2024

