



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. 7463-24
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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 4 October 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 to 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, began a period of active duty on 24 June 1982. In June 1985, you were accused of committing indecent assault upon a female sailor. While disposition of this allegation was pending, you were subject to nonjudicial punishment (NJP) on 23 August 1985 for a violation of the Uniform Code of Military Justice (UCMJ) under Article 112 for being drunk on duty. On 19 September 1985, you were tried before Special Court-Martial (SPCM) for two specifications of offenses under Article 134 of the UCMJ, to include indecent assault and oral communication of indecent language. You were found guilty, contrary to your pleas, and were sentenced to reduction to the paygrade of E-1, four months confinement at hard labor, and to be punitively discharged with a Bad Conduct Discharge (BCD). Your punitive discharge as approved as adjudged following affirmation of the findings and sentence, and your discharge was executed on 27 October 1986.

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 to “Secretarial Authority.” You contend that you are apologetic for the stain your conviction brought to the Navy but that you have committed your life to growing, improving, and providing for both your family and community. For purposes of clemency and equity consideration, you provided your personal statement and five character letters attesting to considerable clemency factors, to include extensive post-discharge volunteerism, community service, your age, and several serious illnesses, including kidney disease for which you need surgery.

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 NJP and SPCM, 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. Although the Board favorably noted the scope and commitment demonstrated by your clemency matters, it concluded the potentially favorable factors you submitted for consideration were insufficient to warrant relief given the seriousness of your misconduct, which under today’s policies and criminal procedure would have required that you register as a sex offender. Additionally, the Board observed that, whereas your counsel references that you are apologetic for having been convicted, your personal statement makes it clear that you stand firm behind your plea of not guilty and, rather than taking responsibility for the wrongfulness of your actions and expressing genuine remorse, you assert that you were wrongly convicted and believe that discrimination factored into the judicial proceedings. Therefore, the Board was not persuaded that you are remorseful for your actions and found no evidence you were wrongfully convicted based on any type of discrimination.

As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant a BCD. While the Board carefully considered the evidence you submitted in mitigation and commends you for 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 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 is attached 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,

10/29/2024

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