



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. 7550-24
Ref: Signature Date

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Dear █

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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 4 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 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 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 on the evidence of record.

You enlisted in the Navy on 13 July 1982 and completed your first period of Honorable service on 14 May 1986. You immediately reenlisted and began a second period of active duty.

On 22 July 1992, you pleaded guilty at a general court-martial (GCM) for frauds against the United States. You were sentenced to eight months of confinement, a reduction in rank to E-1, and a Bad Conduct Discharge (BCD). Your BCD was ultimately ordered to be executed and you were so discharged on 14 June 1993.

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 character of service, be reinstated to JO2 (Journalist Petty Officer Second Class)/E-5, issued two new DD Form 214s (Certificate of Release or Discharge from Active Duty), and to add new separation details on your DD Form 214. You contend that: (1) you faced disciplinary action for delaying reporting your divorce to the military, fearing reprisal after coming out as gay while on active duty, (2) at the time, you married a woman and chose to hide your same-sex relationship, postponing notification to the military about both your same-sex relationship and the divorce, (3) your ex-wife later revealed your status during an inquiry at journalism school, which led to a court-martial and time in the brig, (4) you were shocked by the severity of the consequences and would not have delayed reporting the divorce had you understood the implications, (5) since the early 1990s, military attitudes have changed significantly towards same-sex relationships; today, what happened during your service would be viewed very differently, (6) you would not feel compelled to hide your relationship or divorce, nor would whistleblowing by your ex-wife carry the same impact, and (7) since leaving the military, you have earned multiple college degrees and have led an honorable life. Additionally, the Board noted you checked the "Reprisal/Whistleblower" box on your application but provided no evidence in support of your claim. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

Since you raised the issue of homosexuality, the Board reviewed your record in light of current guidance regarding the repeal of the "Don't Ask, Don't Tell (DADT) policy. That policy provides service Discharge Review Boards with the guidance to normally grant requests to change the characterization of service to "Honorable," narrative reason for discharge to "Secretarial Authority," the separation code to "JFF1," and the reentry code to "RE-1J," 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 you were not discharged based on your homosexuality and your GCM conviction was an aggravating factor. Consequently, the Board concluded the current DADT repeal guidance is inapplicable to your case.

Therefore, after thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your GCM conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded that it showed a complete disregard of military authority and regulations. The Board was not persuaded by your contentions and concluded that your discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service, which was terminated by your BCD.

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 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.

The Board thus determined there was insufficient evidence to conclude you were the victim of reprisal in violation of 10 USC 1034. 10 USC 1034 provides the right to request Secretary of Defense review of cases with substantiated reprisal allegations where the Secretary of the Navy's follow-on corrective or disciplinary actions are at issue. Additionally, in accordance with DoD policy you have the right to request review of the Secretary of the Navy's decision regardless of whether your reprisal allegation was substantiated or non-substantiated. Your written request must show by clear and convincing evidence that the Secretary of the Navy acted arbitrarily, capriciously, or contrary to law. This is not a de novo review and under 10 USC 1034(c) the Secretary of Defense cannot review issues that do not involve reprisal. You must file within 90 days of receipt of this letter to the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), Office of Legal Policy, 4000 Defense Pentagon, Washington, DC 20301-4000. Your written request must contain your full name, grade/rank, duty status, duty title, organization, duty location, mailing address, and telephone number; a copy of your BCNR application and final decisional documents; and, a statement of the specific reasons why you are not satisfied with this decision and the specific remedy or relief requested. Your request must be based on factual allegations or evidence previously presented to the BCNR, therefore, please also include previously presented documentation that supports your statements.

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,

12/4/2024

