

DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS 701 S. COURTHOUSE ROAD, SUITE 1001 ARLINGTON, VA 22204-2490

> Docket No. 7900-24 Ref: Signature Date

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 16 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, 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) and the 20 September 2011 Undersecretary of Defense Memo regarding Correction of Military Records Following the Repeal of 10 U.S.C. 654 (Stanley Memo).

You enlisted in the Navy and commenced active duty on 28 December 1979. On 21 October 1982, you received non-judicial punishment (NJP) for unauthorized absence (UA) from your unit. The same day, you were seen for a command-requested psychiatric evaluation. You indicated that on 17 October 1982, you were intoxicated, called your girlfriend, became depressed, and decided to fly home. After being refused transport without a passport at the civilian airport in ______, you attempted to fly home via military transport from _______ where you were apprehended by shore patrol and transported back to your ship. The doctor indicated that your misconduct was a "one time thing" due to excess alcohol and returned you to full duty.

On 12 January 1983, you received NJP for one day of UA. On 12 September 1983, you received NJP for two days of UA and missing ship's movement. Consequently, your commanding officer

recommended administrative separation with an Under Other Than Honorable conditions (OTH) discharge by reason of misconduct due to commission of a serious offense (for missing ship's movement) and for homosexuality. The Separation Authority subsequently directed your discharge with an OTH characterization of service by reason of misconduct – commission of a serious offense, and you were so discharged on 21 November 1983.

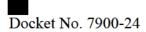
The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie and Stanley Memos. These included, but were not limited to, your desire to change your discharge characterization of service and your contentions you went UA and missed ship's movement because you feared harassment from other Sailors because you had been arrested by civilian authorities after a local policeman found you and "another individual in a state of undress," you would not have received an OTH under today's policies, and having "Homosexual Conduct" on your DD Form D214 has prevented you from attaining a nexus card. 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 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. In making this finding, the Board considered the seriousness of your repeated misconduct and the likely negative impact your conduct had on the good order and discipline of your command. The Board further noted that you were given multiple opportunities to address your conduct issues, but you continued to commit misconduct, which ultimately led to your discharge for misconduct due to commission of a serious offense.

The Stanley Memo sets forth 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. It provides service Discharge Review Boards with the guidance to normally grant requests for relief 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 aggravating factors of misconduct exist in your record and you were not discharged based solely on DADT or a similar policy. The Board considered that you were processed for both homosexual conduct and commission of a serious offense. The Board further noted that there is no mention of homosexual conduct on your DD Form 214 and your approved reason for separation, as indicated on your DD Form 214, was misconduct due to commission of a serious offense.

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 and Stanley Memos 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.

