



**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. 8041-24  
9115-23  
6870-19  
5284-13  
9337-03

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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session on 15 March 2024, has carefully examined your current request. A three-member panel of the Board, sitting in executive session, considered your application on 30 August 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).

The summary of your service remains substantially unchanged from the review addressed in the previous four requests which you have submitted for consideration. Your previous requests to the Board are identified by Docket Numbers 9337-03, 5284-13, 6870-19, and 9115-23; they were considered on 13 February 2003, 5 September 2013, 19 October 2019, and 3 November 23, respectively. Your first application to the Board sought a medical discharge; however, the Board noted at that time that you were not eligible for disability evaluation processing during your military service because a punitive discharge takes precedence over such processing.

Additionally, the Board found that your service was appropriately characterized as under dishonorable conditions given the severity of your misconduct, even after considering factors of remorse, post-service conduct and achievements, and issues incident to your need for ongoing medical care due to your disease.

Your requests in 2013 and 2019 were denied for lack of new and material evidence that had not previously been considered. However, your request for reconsideration, which was considered in Docket 9115-23 included 11 character letters for consideration of a potential grant on the basis of clemency, in addition to a brief from legal counsel whom you retained to assist with your request for reconsideration. You submitted a personal statement explaining that, given your youth and the timeframe of your HIV diagnosis, you did not fully understand the ramifications of your disease. You describe that you were in denial and that you felt stigmatized that people would assume you were a homosexual if you informed them of your positive diagnosis. You also did not understand that lifelong repercussions of your dishonorable discharge at the time. You submit that you have learned from your mistake in the ensuing 30 years since your conviction and are a different man today from the person who committed the misconduct which resulted in your punitive discharge. While the Board noted that you are deeply apologetic for your actions and are, as evidenced by your character letters, a different person today than when you were young, the Board found the severity of your offenses to substantially outweigh the otherwise favorable evidence of your rehabilitation. Specifically, as noted in the Board's recent denial, given the difference in treatment and prognosis for HIV diagnoses over 30 years ago, your misconduct resulted in a substantial and real risk of harm, possibly and death, to others and constituted a significant departure from that expected of a service member such that it continued to warranted your dishonorable discharge even after consideration of otherwise strong clemency evidence.

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 your supplemented contentions regarding the impact your youth and reaction to the stigma of your diagnosis had in contributing to your failure to inform sexual partners of your positive HIV diagnosis. You believe that the Board's recent decision is unjust because it denies you a second chance at life in light of the substantial clemency evidence you have submitted. You supplemented these contentions and your previously considered clemency evidence, some of which you resubmitted as part of your current application, with another detailed personal statement, a letter from your daughter regarding your frankness with others and responsibility regarding your diagnosis, a letter from your physician confirming your medical status and your compliance with treatment and reporting, a letter from your former parole officer, a letter from a licensed professional counselor addressing the impact of your dishonorable discharge on your mental health and discussing your perception that the handling of the criminal charges against you was impacted by lack of understanding of HIV and the possibility of racial disparity in the handling of your case, and several new character letters in addition to previously submitted letters. The Board noted that your personal statement raises concerns regarding the purportedly all-white composition of the members at your General Court-Martial trial and the fact that your trial was held "in the deep South" where you claim that symbols of the Confederacy still persist. You believe the lack of

diversity influenced the outcome of your case and that you have paid your debt to society in the intervening years since. 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 GCM, 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 disagreed with your contention that a lack of understanding regarding HIV adversely impacted the outcome of your GCM proceedings. At the end of the day, you were informed and educated regarding your diagnosis and were being routinely medically monitored. You were fully aware that you had a communicable disease which was primarily spread through sexual contact and, rather than inform your sexual partners so that they could make an informed decision, you chose to engage in sexual contact without informed consent. To the extent you argue that your actions were influenced by self-denial and fear of stigma if you were to disclose your diagnosis, the Board found that you could have chosen to remain abstinent rather than engage in sexual activity. The Board reiterates that your actions undoubtedly exposed others to an unnecessary, and completely avoidable, serious health risk at the time of your misconduct. The Board determined improved treatment and prognosis in recent years does not lessen the impact of your misconduct at that time. Likewise, the Board found insufficient evidence of record to support your contentions that your GCM proceedings were improperly influenced by racial bias. Foremost, you were represented at trial by presumably competent legal counsel who was afforded the opportunity to conduct voir dire to assess potential biases and to challenge members for cause. Your legal counsel was likewise able to make any necessary motions to the military judge regarding concerns for the sanctity of the proceedings and to ensure that any such concerns were preserved for your appellate defense counsel to raise during appellate review. Most importantly, you have submitted no evidence to substantiate your allegations of such bias or even to reliably identify the racial composition of the members. Therefore, in assessing the results of your GCM proceedings against your contentions of injustice, the Board concluded that your sentence was consistent with that which would be expected for the charged offenses irrespective of race, gender, or other similar considerations and found insufficient evidence of either error or injustice.

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

Docket No. 8041-24  
9115-23  
6870-19  
5284-13  
9337-03

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.

In the absence of sufficient new evidence for reconsideration, the decision of the Board is final, and your only recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

Sincerely,

9/20/2024

