



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

██████████
Docket No. 8284-24
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 8 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 Under Secretary of Defense Memo of 20 September 2011 regarding the correction of military records following the repeal of 10 U.S.C. 654 (Stanley Memo) and 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo).

You were granted enlistment waiver for a battery charge and petty theft. You enlisted in the Navy and began a period of active duty on 3 September 1997. On 10 November 1997, you were issued administrative remarks for failing to disclose a traffic violation for which you paid a fine. These remarks captured you were being retained in the Naval service and advised that any further deficiencies in your performance and/or conduct may result in processing for administrative separation. On 11 July 1999, you received nonjudicial punishment (NJP) for three specifications of attempted assault, four specifications of disobeying a lawful general order, specifically the Department of the Navy (DON) sexual harassment policy, and assault by grabbing the crotch of a male service member. Consequently, you were notified of your pending administrative processing for the commission of a serious offense (COSO) and homosexual conduct, at which time you elected your procedural rights to consult with military counsel and to present your case before an administrative discharge board (ADB). On 16 September 1999, your Commanding Officer responded to a congressional inquiry initiated by you based on your

assertions that you were wrongly found guilty at NJP due to lack of evidence adding, “sexual harassment against women or men is not tolerated on board this vessel or in the Navy. As a Commanding Officer, I cannot in clear consciousness retain those personnel who so flagrantly violated the DON (Department of the Navy) policy and cannot maintain honorable standards the American taxpayers expect of the Armed Forces. [Petitioner’s] sexual harassment of members of his division created a hostile environment in this command. His behavior was a significant departure from the conduct required of members in the Naval Service, and it disrupted the good order and discipline in this command. Because it was determined that he committed a serious offense and because those actions amounted to homosexual conduct, it was mandatory to administratively process [Petitioner] for separation for all known offenses: Commission of a serious offense and Homosexual Conduct. The administrative separation board will hear his case and make its recommendation. The ultimate decision will be made by Naval Personnel Command.”

On 2 November 1999, an ADB was convened and determined that a preponderance of the evidence supported a finding of misconduct for commission of a serious offense and homosexual conduct. The ADB recommended that you be separated from the Navy with an Other Than Honorable (OTH) characterization of service. Your Commanding Officer forwarded this recommendation to the Separation Authority (SA) concurring with the ADB’s recommendation and adding, “This was not a simple case of homosexual conduct as much as it was a case [on] ongoing sexual harassment and attempted assaults thus warranting a misconduct-based discharge. The location and pervasive nature of the ongoing misconduct as well as a lack of any mitigating factors, makes the board’s recommendation of an Other Than Honorable discharge the most appropriate characterization of service.” Ultimately, on 20 January 2000, you were discharge with an OTH by reason of Misconduct (Commission of a Serious Offense).

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request on, 22 July 2003, 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 Stanley and Wilkie Memos. These included, but were not limited to, your desire to upgrade your discharge character of service and reentry code. You contend that: (1) you were wrongfully accused of homosexual acts and sexual harassment, (2) others were coerced into making false allegations against you, (3) these false accusations led to an inaccurate discharge that has greatly affected your reputation, eligibility for certain veterans benefits, and future career prospects, (4) a Presidential pardon “for troops expelled from the military for their sexuality,” further supports your request, and (5) MILPERSMAN 1910-148 (Homosexual conduct – member engaging in, attempting to engage in, or soliciting another to engage in homosexual act) is no longer in effect. Additionally, the Board noted you checked the “sexual assault/harassment” box on your application but did not provide any evidence or argument in support of your claim. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

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

NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded it showed a complete disregard for military authority and regulations. Further, the Board considered the likely negative effect your misconduct had on the good order and discipline of your unit. Finally, the Board noted you provided no evidence, other than your statement, that you were wrongfully found to have committed misconduct. Therefore, the Board determined the presumption of regularity applies in your case. 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. 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.

Regarding your contention that you were wrongfully processed for your homosexual acts and a change in policy mandates a correction to your record, the Board disagreed. 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 to change records 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 do not qualify for relief because you were processed, and ultimately discharged, for commission of a serious offense in addition to homosexual conduct and aggravating factors, as evidenced by your NJP, exist in your record.

Therefore, while the Board carefully considered the evidence you submitted in mitigation, even in light of the Stanley and Wilkie 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. 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 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,

12/10/2024

