



**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. 8563-24  
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 14 March 2025. 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 and began a period of active duty as a student at the Naval Academy Preparatory School (NAPS) on ██████████. In ██████████, several female midshipmen candidates made accusations of sexual harassment against you. On ██████████, you requested a meeting with your company officer and senior enlisted leader (SEL) to discuss the allegations; however, you were informed prior to beginning your winter break that a report had been filed. An investigation was conducted in ██████████ during which your legal counsel worked with command investigators to answer questions responsive to the investigation. On ██████████, you were informed of the completed investigation and permitted to conduct a visual review of the investigation to include having an opportunity to take notes. On ██████████, an adjudication hearing was convened to review the investigations and allegations. On ██████████, you were informed of the recommendation for your involuntary disenrollment from NAPS due to misconduct and you signed the notification indicating your intent to appeal.

On ██████████, your initial appeal was denied after Superintendent, U.S. Naval Academy (USNA) determined that your unsatisfactory conduct was inconsistent with the NAPS mission.

Referencing NAPS Instructions (NAPSINST) 5400.1F and 1610.1H, this decision concluded that you had been afforded all procedural rights incident thereto. In a subsequent email regarding your appeal, you alleged that you had been denied procedural rights because you were not provided a copy of the Commanding Officer's (CO's) memorandum, and all enclosures, before the matter was forwarded for action and decision. Subsequently, you were provided with access to review the CO's memorandum. On ██████████, your civilian lawyer submitted a second appeal to Superintendent, USNA. In response, the Superintendent stated, "contrary to your assertions and those of your counsel, I find that the disposition in this matter complied with the requirements set forth in references (c) and (d) and that you were afforded all of your procedural rights. I also find that the [CO] NAPS had a basis in regulation and fact for his recommendations and findings." As a result, on ██████████ you were honorably discharged for failure to complete a commissioning or warrant program and assigned a reentry code of "RE-3K;" reflecting that status.

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 be reinstated either into NAPS or USNA. You contend that you did not commit sexual harassment, the allegations were based upon hearsay and rumors without reliable evidence or proper investigation, and these allegations were initially levied against you by a pair of female midshipmen candidates already known for similar fabrications. You also believe that evidence of your character and good conduct disproves that you committed the offenses of which you were accused. Additionally, you allege that your disenrollment recommendation was marred by a combination of due process and procedural errors with respect to the conduct of the investigation, your hearing, and the administrative processing of your appeal. Your allegations include, but are not limited to, the following assignments of procedural or discretionary error:

- that a material error of fact and procedure arose when your chain of command had no interest in hearing your defense against the accusations and, instead, your SEL determined your guilt prior to any report being filed or any investigation being conducted;

- that it was improper for leadership to swear at and demean you;

- that the investigation into the allegations relied on double hearsay;

- that all witness testimony presented for consideration at your hearing lacked context and was qualified by statements indicative of lack of credibility, such as "there are rumors that" or "we have heard" or "another person told me";

- that the two female midshipmen candidates who initially filed the report had previously been reprimanded for spreading false rumors about classmates;

- that you were initially denied the opportunity to review the investigation and, even once permitted to review it, were only allowed a visual examination from which you were permitted to take notes for your legal counsel, without photographs of documents and without being provided a personal copy;

- that the conclusion as to your guilt of committing the offense of sexual harassment relied on defective evidenced, to include contradictions in the witness statements which indicate

falsehoods in the accusations, but which you believe were summarily dismissed during your hearing;

- that there was no judge advocate officer present at the proceedings to ensure adherence to proper procedure;

- that you were not permitted to cross-examine witnesses in order to impeach their testimony;

- that your ability to appeal the decision was impeded because you were not provided a copy of his CO's memorandum in order to respond;

- that it was a procedural error for the Superintendent to initially conclude you had been afforded all procedural rights when, in reality, you had been denied a copy of the investigation, had been denied review of the CO's memo, and had not been permitted to cross examine witnesses; and,

- that discretionary decisions related to your disenrollment and the denial of your appeal were made in reliance on these errors.

In support of your contentions and for the purpose of clemency and equity consideration, you submitted three letters of support, all of which appear to be from fellow midshipmen-candidates, a personal statement, and records related to your hearing and the appeal of your disenrollment.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. As an initial matter, the Board notes that it lacks the statutory authority to appoint a midshipman candidate or a midshipman, respectively, into either NAPS or USNA due to authorities governing the admissions and appointment processes. At most, if the Board were to find sufficient evidence of an error or injustice, it could potentially set aside the finding of misconduct, direct the expunging of misconduct related records, and/or potentially direct the correction of your narrative reason for separation.

Regardless, the Board found insufficient evidence of error or injustice with the final decision to remove you from NAPS. With respect to the evidentiary standard of the witness statements obtained during the investigation, the Board noted that you have failed to provide any documentary evidence in support of your contentions. To the extent that you claim to have had a right to a copy of such an investigation, the Board found insufficient evidence of a regulatory authority which might have established a right to a copy or even might have permitted a direct release of the investigatory record incident to your non-adversarial, administrative hearing. Nor do you appear to have submitted a request via the Freedom of Information / Privacy Act to obtain release of any such records following proper redaction in accordance with applicable law. Likewise, to the extent that you allege due process violations related to your ability to cross examine witnesses, and noting that the government was permitted under the regulations to rely entirely upon the investigation as evidence of your alleged misconduct, the Board found insufficient evidence that any witnesses testified at the hearing at the behest of the government or that you were denied the opportunity to cross examine such witness or witnesses. Alternatively, the Board observed that you had a due process right to request the production of reasonably available witnesses to testify on your behalf at your hearing; however, again the Board found no evidence of any such request on your part, much less evidence of a denial of such request from either you or your legal counsel. Given the lack of evidence otherwise, and after reviewing the

guidance in the relevant NAPSINSTs, the Board concluded that both the investigation and hearing substantially complied with those regulations.

To the extent you allege that your right to appeal was adversely impacted by procedural error, to include the initial determination that you had been afforded all procedural rights when you had been denied a copy of the CO's memo, the Board noted that this error was made harmless since you were subsequently permitted to review a copy of the CO's memo and to submit a new appeal request for consideration. Additionally, whereas the initial review of your appeal had referenced NAPSINSTs which were superseded by more recent versions of those instructions, the final decision by the Superintendent clearly took into account the versions of the instructions which were current at the time of your proceedings.

Finally, although the Board would not condone the demeaning treatment you alleged was committed by your SEL, the Board found insufficient evidence that this particular allegation had any material impact on the conduct of the investigation into the allegations of sexual harassment or on your administrative hearing before the CO, NAPS, or on the Superintendents review of your appeal. Ultimately, the Board found insufficient evidence of any procedural errors or any due process violations which might have substantially rendered your administrative hearing and dismissal erroneous or unjust. Likewise, the Board found insufficient evidence of record of good character to overcome the presumption of regularity regarding the administrative hearing which substantiated the sexual harassment allegations against you. As reflected in the letter from your former NAPS CO and by the decision of the Superintendent of the Naval Academy, your conduct was inconsistent with the NAPS mission, and the Board declined to overturn the judgment of the senior officers who were duly appointed to oversee the academic and professional education of those midshipmen candidates.

As a result, the Board determined that there was no impropriety or inequity in your discharge and concluded that your misconduct and disregard for good order and discipline clearly merited your 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. 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,

4/8/2025

