



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. 8594-24
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 18 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).

During your enlistment processing your disclosed pre-service assault with a deadly weapon, faulty brake light, and speeding infractions. You enlisted in the Navy Reserve and began a period of active duty on 6 June 1994. On 18 January 1997, you commenced a 27-day period of unauthorized absence (UA) which ended in your surrender. Just a few days after your return, you commenced a second period of UA which lasted for 170 days and again ended in your surrender. On 2 October 1997, you submitted a request for an Other Than Honorable (OTH) separation in lieu of trial by court-martial (SILT) for your previously mentioned periods of unauthorized absence. In the meantime, on 14 October 1997, you received nonjudicial punishment (NJP) for wrongful THC. Ultimately for SILT request was approved and, on 31 October 1997, you were so discharged.

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 and your contentions that: (1) in the last seven months of your three-year enlistment, you were outed as gay, (2) initially, you felt relieved no longer needing to hide your true self, but this was short-lived, (3) you faced ostracism, inappropriate jokes, and discriminatory treatment from those you considered friends, (4) without the coping skills or support systems available today, and unable to report the harassment due to Navy policy at the time, you struggled, (5) this led to poor decisions, including going UA for six months and a positive drug test upon your return, (6) while you take responsibility for your actions, you believe the Navy's policies and culture at the time played a significant role in your struggles, (7) military policy has since evolved, and you believe your discharge should reflect these changes, (8) with your family's circumstances and your own growth, you now look back on your service with pride, and (9) you respectfully request an upgrade of your OTH discharge to Honorable, acknowledging the progress in military policy and culture that could have supported you to thrive and make a career of your service. 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 your misconduct, as evidenced by your SILT request and NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it included a drug offense. The Board determined that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. The Board noted marijuana use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. Additionally, the Board determined that you already received a large measure of clemency when the convening authority agreed to administratively separate you in lieu of a trial by court-martial, thereby sparing you the stigma of a court-martial conviction and possible punitive discharge.

Lastly, 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. Ultimately, the Board determined the current DADT repeal guidance is inapplicable to your case since you were not processed under the DADT or similar policy and had aggravating misconduct in your record. Further, the Board observed that you provided no evidence, other than your statement, to substantiate your contentions of mistreatment.

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. 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 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,

12/16/2024

