



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. 8695-24
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 30 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 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 with a pre-service disciplinary history of petty theft, public intoxication, and various traffic offenses, and you began a period of active duty on 21 April 1986. During your enlistment, you were subject to nonjudicial punishment on five occasions, between November 1986 and October 1988, for multiple violations of the Uniform Code of Military Justice (UCMJ), to include: seven specifications under Article 86 for periods of unauthorized absence, and two specifications under Article 96, for failure to obey a lawful written order by going off base in an unauthorized uniform and for failure to obey a lawful order to report to the barber shop to get your hair cut within standards. Following your fifth NJP, on 12 October 1988, you were notified of administrative separation processing for misconduct due to your pattern of misconduct. While separation proceedings were pending action, you absented yourself without authority for three periods: 2-18 November 1988, 18-22 November 1988, and 7-13 February 1989. During your absence, a recommendation for your discharge under Other Than Honorable (OTH) conditions was forwarded for decision. However, on 2 March 1989,

your approved administrative discharge under OTH conditions was held in abeyance pending action on charges which had been referred to Special Court-Martial (SPCM). You were tried and convicted by SPCM, on 3 March 1989, for three specifications of violations under Article 86 for your periods of UA. You were sentenced to 40 days of confinement at hard labor and a Bad Conduct Discharge (BCD). The findings and sentence from your SPCM were affirmed on 23 March 1990, and you were so discharged on 5 April 1990.

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 to correct your discharge record to reflect that you received your GED in July 1984 prior to your enlistment. You contend that the derogatory information and allegations against you were concocted by your commanding officer to protect you from possible assault or risk of harm due to your being a transsexual or transgender person, which you claim resulted in a reservist threatening that you should be killed. You believe that, based on your transgender status, your request for an upgrade should be granted under recent policy changes since there were no aggravating factors in your record. For purposes of clemency and equity consideration, you submitted prison records reflecting your current receipt of hormone treatment therapy.

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 NJPs and SPCM, 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. Additionally, the Board found the available records insufficient to establish that being transgender factored into your misconduct or discharge, especially in light of your conviction before SPCM, where you were represented by competent legal counsel and afforded all of the protections incident to such legal proceedings, to include raising potential defenses or mitigating factors. Likewise, the Board found it improbable that a commanding officer would have “concocted” your extended UA periods in November 1988 and February 1989 to purportedly protect you when the end result of those offenses resulted in your SPCM conviction and punitive discharge.

Further, to the extent that your discharge record indicates that you did not finish high school, the Board noted that your enlisted classification record states that you passed you received a certificate of equivalency in July 1984. However, the Board found this error immaterial to your characterization of service and insufficient to warrant correction, as it causes no undue prejudice since you clearly have alternate methods to establish the receipt of your GED.

As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant a BCD. 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.

