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

[redacted]
Docket No. 9450-24
Ref: Signature Date

[redacted]

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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your reconsideration application on 17 January 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 the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice or clemency determinations (Wilkie Memo).

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You originally enlisted in the U.S. Navy and began a period of active duty service on 4 August 1980. Your enlistment physical examination, on 10 July 1980, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. Upon the completion of your enlistment on 3 December 1987 you received an Honorable discharge and were assigned an RE-R1 reentry code. Following a break in service, you reenlisted in the U.S. Navy on 22 November 1988.

On 6 July 2000, based on mixed pleas, you were convicted at a General Court-Martial (GCM) of (a) assault and battery upon a child under 16 years of age (your son), and (b) two (2) separate specifications of indecent acts with a child under 16 years of age (your daughter) when you fondled her on two occasions. A GCM panel consisting of officer and enlisted members sentenced you to confinement for four (4) years,[1] a reduction in rank to Seaman Recruit (E-1), total forfeitures of pay and allowances, and to be discharged from the Navy with a Dishonorable Discharge (DD). On or about 12 December 2000, the Convening Authority approved the GCM findings and sentence, except waived the automatic forfeitures of pay for a period of six (6) months.

On 20 February 2003, the U.S. Navy-Marine Corps Court of Criminal Appeals (NMCCA) approved the GCM findings and sentence. The NMCCA determined that evidence was legally and factually sufficient to sustain your findings of guilty of indecent acts. The NMCCA found that your daughter testified truthfully in her accusations against you and that she had made the initial accusation because she was afraid you would molest her again. The NMCCA also found that the fact you had confessed to molesting your daughter fortified its conclusion that your daughter testified truthfully at trial. However, on 27 July 2004, the U.S. Court of Appeals for the Armed Forces (CAAF) reversed the NMCCA decision due to NMCCA's failure to order a *DuBay* evidentiary hearing to assist it in determining whether your petition for a new trial should be granted and a new trial be ordered.

On 14 January and 23 March 2005, the CAAF-ordered *Dubay* hearing took place before a military judge (MJ). Your daughter was the only victim to testify. You were present but did not testify. In her testimony at [redacted] hearing, on 14 January 2005, your daughter rejected her post-trial recantation and reaffirmed her trial testimony that you had molested her. Your daughter testified that she had falsely recanted her trial testimony because she felt guilty and sorry for you after several members of your family told her that you were "miserable and dying" in confinement and had to get out of jail. However, your daughter testified that if the case were retried, she would give testimony consistent with her testimony at the original trial. Finding that he was not "reasonably well satisfied" that your daughter's trial testimony was false, the MJ judge concluded that it was unlikely that your daughter's recantation "would probably produce a substantially more favorable result" for you if considered by a court-martial.

On 7 June 2007, the NMCCA denied your petition for a new trial. After reconsidering your petition for new trial in light of the [redacted] hearing, the NMCCA was not "reasonably well satisfied" that your daughter's trial testimony was false. Accordingly, the NMCCA concluded that your daughter's post-trial recantation of her trial testimony, if considered by a court-martial in the light of all other pertinent evidence, would probably not produce a "substantially more favorable result" for you. The NMCCA had already previously affirmed the July 2000 GCM findings and sentence.

On 31 October 2007, CAAF affirmed the NMCCA's decision to deny your petition for a new trial. Upon the completion of GCM appellate review in your case, on 8 November 2007, you

[1] The Board noted Block 29 of your DD Form 214 showed "Time Lost" while spent in confinement from 6 July 2000 through 3 August 2003, a confinement period spanning 1,124 days.

were discharged from the Navy with a DD and were assigned an RE-4 reentry code.

On 31 March 2009, this Board administratively closed your initial petition for relief. It explained in its decision letter that it lacked the authority to modify a court-martial conviction and could only reduce the sentence as a matter of clemency. The same restrictions continue to apply to this Board.

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 for a discharge upgrade and contentions that: (a) fraud was committed against you by your accuser which you pleaded not guilty from the very beginning of your court martial, (b) you are innocent of this crime and you are seeking justice to get exonerated of the crime you were convicted of, and (c) you would like to have a clean military record again, and you worked really hard to be a squared away Sailor as one could see from your first enlistment ending in an honorable discharge. For purposes of clemency and equity consideration, the Board considered the totality of the evidence you provided in support of your application.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. The Board did not believe that your record was otherwise so meritorious to deserve an upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined the record reflected that your egregious misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not be held accountable for your actions.

The Board noted that you pleaded guilty to the serious assault charge where you beat your son. The Board further noted that a plea of guilty is the strongest form of proof known to the law. Based upon your plea of guilty alone, and without receiving any evidence in the case, a court-martial can find you guilty of the offenses to which you pleaded guilty.

Additionally, the Board concluded that you did not provide credible and/or convincing evidence to substantiate or corroborate your evidentiary and legal/factual sufficiency contentions regarding your sexual assault offenses. Instead, the Board determined that you were found guilty of your serious GCM offenses because you were indeed guilty, and the Board was not willing to re-litigate well-settled facts that are no longer in dispute from a final GCM conviction occurring over seventeen (17) years ago.

The Board also noted that, although it cannot set aside a conviction, it might grant clemency in the form of changing a characterization of discharge; even one awarded by a court-martial. However, the Board concluded that, despite your contentions, this was not a case warranting any clemency as you were properly convicted at a GCM of serious misconduct.

As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your egregious 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. 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,

1/23/2025

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