



Docket No. 9995-24
Ref: Signature Date

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 application on 29 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 enlisted in the Navy and began a period of active duty on 13 May 2003. On 11 December 2003, you received non-judicial punishment (NJP) for willfully damaging military property, disorderly conduct, and communicating a threat. Additionally, you were issued an administrative remarks (Page 13) retention warning formally counseling concerning deficiencies in your performance and conduct as evidenced by your violations of Articles 108 and 134 of the Uniform Code of Military Justice (UCMJ). The Page 13 expressly advised you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative separation. On 22 October 2004, you received your second NJP for negligent discharge of your M9 service pistol. You were again issued a Page 13 retention

warning counseling. On 24 September 2006, you received your third NJP for larceny and violation of Article 134¹. On 26 May 2007, you were arrested by civilian authorities for robbery with a dangerous weapon and incarcerated pending trial.

Consequently, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to minor disciplinary infractions and commission of a serious offense. You were advised of your procedural rights and waived your right to consult with counsel and present your case to an administrative discharge board. The commanding officer forwarded your administrative separation package to the separation authority recommending your administrative discharge from the Navy with an Other Than Honorable (OTH) characterization of service. The separation authority approved the recommendation, and you were so discharged for commission of a serious offense on 21 September 2007.

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) you were diagnosed with post-traumatic stress disorder (PTSD) after an “event” that occurred which caused your separation, (2) you were not given adequate representation and forced to take an administrative separation, (3) you were not allowed to speak to a Judge Advocate General (JAG) to fully understand your rights and courses of action, and (4) if you were given the opportunity to speak to representation you may have had a different discharge. Additionally, the Board noted you checked the “PTSD” box on your application but chose not to respond to the Board’s request for supporting evidence of your claim. 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 that your misconduct, as evidenced by your NJPs, civilian authority arrest, and multiple administrative counselings, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded your misconduct showed a complete disregard for military authority and regulations. The Board also considered the discrediting nature of your arrest by civilian authorities. Further, the Board noted that you were provided multiple opportunities to correct your conduct deficiencies during your service; however, you continued to commit additional misconduct. Your conduct not only showed a pattern of misconduct but was sufficiently pervasive and serious to negatively affect the good order and discipline of your command. Finally, the Board observed that you did not provide any evidence, other than your statement, to substantiate your contention that you were denied due process. The record does not support your allegation that you were denied access to legal counsel. Your record documents that you were advised of your rights and provided an opportunity to consult with legal counsel; however, by your initials on your rights acknowledgement form, you voluntarily waived your right to do so. Therefore, the Board determined your administrative separation was in accordance with all applicable regulations and law. 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

¹ The specifics of the Art 134 violation were not available in your record

presume that they have properly discharged their official duties. The Board determined your evidence was insufficient to overcome the presumption of regularity in your case.

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. 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 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,

2/24/2025

