



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

██████████
Docket No. 11303-24
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.

A three-member panel of the Board, sitting in executive session, considered your application on 12 February 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 U.S. Navy and began a period of active duty on 14 May 2019. On 3 May 2023, you were convicted by a general court-martial (GCM) after pleading guilty to Article 128 of the UCMJ, assault consummated by battery of touching a female victim's torso and chest with your hands. You were sentence to confinement, forfeiture of pay, reduction in rank, and a Bad Conduct Discharge (BCD). While awaiting appellate leave, you received non-judicial punishment (NJP) for wrongful use of methamphetamine and amphetamine. After completion all levels of review, you were so discharged with a BCD on 28 May 2024.

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 you

received an unjust judgment. You contend the interrogator intimidated and coerced you during the process and that could be grounds for a legal defense against the information you provided. You further contend that you felt pressured into pleading guilty and to accepting the plea bargain. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

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 GCM and NJP, 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. Furthermore, the Board noted you continued to commit misconduct after your GCM conviction. Finally, the Board was not persuaded by your contentions. The Board observed that you pleaded guilty to the charged offenses and specifications at your GCM. 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. The Board noted that during a GCM guilty plea such as yours, the Military Judge (MJ) will only accept your guilty plea once they were satisfied that you fully understood the meaning and effect of your guilty plea, and only after determining that your plea was made voluntarily, of your own free will, and with full knowledge of its meaning and effect. On the record, the MJ would have also had you state on the record that discussed every aspect of your case including the evidence against you and possible defenses and motions in detail with your lawyer, and that you were satisfied with your counsel's advice. Further, the MJ would have also had you state on the record that you were pleading guilty because you felt in your own mind that you were guilty. Moreover, the Uniform Code of Military Justice states that during the appellate review process, the appellate court may affirm only such findings of guilty and the sentence or such part or amount of the sentence as it finds correct in law and fact and determines, on the basis of the entire record, should be approved. In other words, the appellate court has a duty to conduct a legal and factual sufficiency review of the case. If any errors or improprieties had occurred at any stage in your case, the appellate court surely would have concluded as such and ordered the appropriate relief. However, no substantive, evidentiary, or procedural defects were identified in your case.

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. The Board determined that characterization with a BCD appropriate when the basis for discharge is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor.

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 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,

3/6/2025

