



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

██████████
Docket No. 11669-24
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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 19 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 20 September 2011 Don't Ask Don't Tell (DADT) 10 U.S.C. 654 (Repeal) Under Secretary of Defense Correction of military records following Repeal of U.S.C. 654 and 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. Marine Corps and began a period of active duty on 18 December 1993. Upon entry onto active duty, you were granted a waiver for illegal use of a controlled substance while in the Delayed Entry Program. On 13 June 1994, you began a period of UA that ended with your apprehension on 5 August 1994. On 15 August 1994, you received non-judicial punishment (NJP) for your 53 day UA. On 19 January 1995, you received your second NJP for being disrespectful in language toward a sergeant. You were subsequently issued a counseling

warning for your pattern of misconduct and advised further deficiencies in your performance and or conduct may result in disciplinary action and in processing for administrative discharge. On 7 February 1996, you received your third NJP for failure to obey a lawful order and driving under the influence of alcohol. You were subsequently screened and diagnosed as alcohol dependent and ordered into Level III treatment. On 29 February 1996, you refused treatment.

Consequently, you were notified of administrative separation processing for misconduct pattern of misconduct and alcohol rehabilitation failure. After you waived your rights, the Commanding Officer (CO) made his recommendation to the Separation Authority (SA) that you be discharged with an Other Than Honorable (OTH) characterization. Prior to the SA acting, you received your fourth NJP, on 2 April 1996, for breaking restriction. The SA accepted the recommendation and directed you be discharged for pattern of misconduct. You were so discharged on 17 May 1996.

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 and DADT repeal policy guidance. These included, but were not limited to, your desire for an upgrade in your characterization of service due to the repeal of DADT and contentions that, because of your sexual orientation, you were teased and depressed because you didn't fit in with the other Marines. You also contend that you were bullied and harassed and, at one point, you went AWOL because you felt out of place but decided to return because you knew it was the right thing to do. 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 NJPs, 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. The Board observed you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct; which led to your OTH discharge. 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.

Regarding your DADT contention, the Board determined that you do not meet the eligibility guidelines for relief under the DADT repeal policy. The current policy for correction of military records following the "don't ask, don't tell" (DADT) repeal of 10 U.S.C. 654 provides service Discharge Review Boards with the guidance to grant requests to change the characterization of service to "Honorable" when the original discharge was based solely on DADT or a similar policy in place prior to enactment of it and there are no aggravating factors in the record; such as misconduct. In your case, the Board determined you were not discharged based on your sexual orientation¹ and the aggravating factor of misconduct is present in your record. Based on these factors, the Board determined you do not qualify for relief under the existing policy.

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

¹ The Board found no evidence in your record to substantiate your contention that you were targeted for separation or mistreatment based on your sexual orientation.

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,

3/13/2025

