



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

██████████
Docket No. 11997-24
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 17 March 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) and the Under Secretary of Defense Memo of 20 Sep 11 (Correction of Military Records Following Repeal of 10 U.S.C. 654).

You enlisted in the Navy after being granted an enlistment waiver for non-misdemeanor battery and began a period of active duty on 20 September 2002. On 4 February 2005, you received nonjudicial punishment (NJP) for absence without leave, false official statements and drunk and disorderly conduct on duty.

Unfortunately, the documents related to your administrative separation are not in your official military personnel file (OMPF). In this regard, 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 (as is the case at present), will presume that they have properly discharged their official duties. Your Certificate of Release or Discharge from Active Duty (DD Form 214), reveals you were separated from the Navy, on 1 March 2005, with a General (Under Honorable Conditions (GEN) characterization of service, narrative reason for separation of "Misconduct-Commission

of a Serious Offense,” separation code of “HKQ,” and reenlistment code of “RE-4.” Your separation code is consistent with separation due to commission of a serious offense.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade and change to your reentry code. In your application you contended you did not receive military due process and made no mention of being processed due to your sexual orientation. The NDRB denied your request on, 31 July 2018, after determining your discharge was proper as issued.

The Board carefully considered all potentially mitigating factors to determine whether the interest 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 change your record consistent with the repeal of the “Don’t Ask, Don’t Tell” (DADT) policy. You contend that: (1) your discharge was a direct consequence of your bisexual lifestyle at the time, (2) you were separated under the discharge code HKQ: Misconduct – Commission of a Serious Offense and to the best of your understanding, this was the appropriate characterization of your discharge, (3) as an enlisted service member, you were not fully aware of the specific actions that warranted different types of discharges, nor was this distinction clearly explained to you, (4) you were informed that, due to your lifestyle, your conduct was deemed unbecoming, leading to your separation, (5) the repeal of the DADT policy in 2011 represents a significant shift in military policy, and (6) given that you were discharged prior to the repeal, you request that your discharge be reconsidered, amended, and that you be made whole. For purposes of clemency and equity consideration, the Board considered the totality of your application; which consisted solely of your petition without any other additional documentation.

Since you raised the issue of DADT, the Board considered the aforementioned memo addressing the policy repeal. The memo sets forth the Department of the Navy's current policies, standards, and procedures for correction of military records following the DADT repeal of 10 U.S.C. 654. It provides service Discharge Review Boards with the guidance to normally grant requests to change the characterization of service to “Honorable,” narrative reason for discharge to “Secretarial Authority,” the separation code to “JFF1,” and the reentry code to “RE-1J,” 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.

After a thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded that it showed a complete disregard for military authorities and regulations. Additionally, the Board determined you are not entitled to relief under the DADT repeal guidance since there is no evidence you were discharged based solely on your sexual orientation and there appears to be aggravating factor of misconduct present in your record¹. The Board also considered that your application to the NDRB did not make any reference to DADT even though it was submitted approximately four years after the

¹ The Board considered that your reason for separation and separation code are not consistent with an administrative separation for homosexual conduct. The Military Personnel Manual contained specific articles that address the processing under DADT. Commission of a serious offense was not an authorized basis for separation in cases based solely on DADT.

policy's repeal. Therefore, the Board determined insufficient evidence exists 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. 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. 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 the 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 is attached 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,

4/4/2025

