



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

██████████  
Docket No. 2132-25  
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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session on 2 May 2025, has carefully examined your current request. 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 previously applied to this Board for relief. On 9 March 2011, the Board denied your initial petition requesting to change your reentry code ("RE Code") to allow you to reenter the military. On 3 May 2012, the NDRB denied you relief and determined that your discharge was proper as issued and no change was warranted. You had unsuccessfully contended that your Honorable nineteen years of service outweighed your misconduct. In the interim, this Board, on 8 January 2013, again denied your petition to change your RE Code.

On 12 December 2013, the NDRB granted you partial relief and upgraded your discharge characterization to “General (Under Honorable Conditions)” (GEN) but determined that your RE Code and narrative reason for separation should remain the same. The NDRB did not grant relief based on your contention that your misconduct was an isolated incident in almost twenty years of service. The NDRB, however, did grant partial relief based on post-service conduct considerations.

On 10 December 2014, this Board, as a matter of clemency, originally granted you sufficient service credit for retirement and a discharge upgrade while keeping the RE Code the same. However, on 3 February 2015, the Assistant General Counsel to the Assistant Secretary of the Navy for Manpower and Reserve Affairs (AGC) expressly overruled this Board’s grant of relief. Based on information in your counsel’s brief from your previous petition, following a successful challenge at the Federal Circuit, a second AGC again denied you relief on the grounds that granting relief would be inconsistent with the Navy’s practice in similar cases involving discharge for criminal conduct and criminal convictions. Your unsuccessfully challenged the second AGC denial at the Federal Circuit and the U.S. Supreme Court ultimately denied your petition for certiorari. On 8 July 2022 this Board denied your petition. The summary of your service remains substantially unchanged from that addressed in the Board’s previous decision.

You originally enlisted in the Navy on 27 December 1988. Your last reenlistment while on active duty occurred on 15 December 2004.

At all relevant times during your civilian arrest, incarceration, felony conviction, and administrative separation you were attached to “██████████” in ██████████. On 16 February 2008, you were apprehended and incarcerated by civilian authorities in ██████████ on suspected domestic violence-related offenses. The victim was your estranged spouse.

The Board noted that slightly different versions of the facts surrounding the events have now been proffered.

According to your counsel from your previous petition:

██████████ was arrested on February 16, 2008, for firing a weapon at a vehicle carrying his estranged wife during a dispute about ██████████ desire to reconcile with his wife and gain access to his children. No one was injured in the incident, but ██████████ was convicted on February 4, 2009 and subsequently discharged by the Navy on June 26, 2009, after his 20-year retirement date had passed. Although sentenced to six years in prison, Mr. Strand was released after three years based upon his model conduct.

According to your current counsel:

The conviction forming the basis for discharge resulted from ██████████ finding his wife in bed with another man. Nobody was injured. In the heat of sudden passion,

he discharged a firearm into a car – without the intent to injure anybody. It was merely property damage in the heat of the moment.

Upon your 16 February 2008 arrest, you were incarcerated by civilian authorities awaiting trial. On such date, the Navy placed you in an unauthorized absence (UA) status given your incarceration and being absent from your appointed place of duty<sup>1</sup>.

On 4 February 2009, you were convicted in the Circuit Court of the City of ██████████, ██████████ of the following offenses: (a) attempted malicious wounding, a felony, (b) attempted unlawful wounding, a felony, and (c) the use of a firearm in the commission of a felony. You were sentenced to confinement for six years, but the Court suspended a portion of the sentence conditioned on good behavior.

Following your felony conviction, on 16 March 2009, your command notified you of administrative separation proceedings by reason of misconduct due to the commission of a serious offense, and misconduct due to a civilian conviction. You waived, inter alia, your rights to consult with counsel, submit statements on your behalf, and to request an administrative separation board. Ultimately, on 26 June 2009, you were discharged from the Navy for misconduct with an Other Than Honorable conditions (OTH) characterization of service and were assigned an RE-4 reentry code. According to your reissued DD Form 214, following Naval Discharge Review Board (NDRB) partial relief, at the time of your 26 June 2009 discharge from the Navy, and accounting for and deducting “time lost” for your time spent in civilian confinement, you had completed nineteen (19) years, one (1) month, and twenty (20) days of cumulative active service.

You now proffer, in part, new evidence and mitigating factors emerged during the intervening years of federal litigation. 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 placement on the retired list with back pay and contentions that: (a) you successfully completed the “██████████ ██████████” course of instruction, (b) the AGC, on the basis of factually inaccurate information, declined to adopt this Board’s favorable recommendation from late 2014, (c) your post-service conduct merits relief, (d) the Department of Defense Instruction (DODI 1332.28 series) clearly spells out the equitable factors the Board should consider, (e) the last Board decision did not explain the analysis of any of such factors, (f) in the case at bar, there was a conviction in a case with no personal injury and minor property damage mitigated by two decades of Honorable service, and (g) the errors here are substantial, significantly prejudicial, and warrant relief. 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. First and foremost, the Board disagreed with your argument that attempt to minimize your felony conviction by describing it as merely an offense against property with no

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<sup>1</sup> Being placed in a UA status was significant because the Department of the Navy treats civilian incarceration as “time lost,” and each day incarcerated and thus in a UA status was added onto the end of your enlistment contract day-for-day, and did not count towards accruing active duty service for retirement eligibility.

personal injury. During a domestic dispute, you intentionally, recklessly, and deliberately fired a weapon at a vehicle that you knew your estranged wife was inside. Fortunately for you and your estranged wife, only the car was damaged by gunfire during your episode and no bodily injury occurred. The Board determined that your failure to hit your wife in that situation does not constitute a mitigating factor.

Additionally, the Board did not believe that your record was otherwise so meritorious as to deserve service credit towards retirement and/or a further discharge 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 noted that, although one's service is generally characterized at the time of discharge based on performance and conduct throughout the entire enlistment, the conduct or performance of duty reflected by only a single incident of misconduct may provide the underlying basis for a discharge and its resulting discharge characterization<sup>2</sup>. The Board determined that an OTH or GEN characterization is generally warranted for misconduct and is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor. The Board also determined that the record clearly reflected your egregious misconduct was willful and indicated you were unfit for further service. Moreover, the Board noted that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions.

The Board determined there was no credible and convincing evidence in the record regarding any command misconduct, improper motives, or abuses of discretion or judgment in the investigating, handling, and processing of your post-conviction administrative separation. The Board further determined your previous contentions that your administrative separation notification, election of rights, and separation processing were somehow legally and procedurally deficient and violative of your due process rights were not persuasive. The Board unequivocally determined that your administrative separation was legally and factually sufficient, and in compliance with all Department of the Navy directives and policy at the time of your discharge.

The Board also determined your previous contention that federal law, namely 10 U.S.C. § 1176, afforded you the ability to retire because you had accrued eighteen or more years of service was without merit. Interpreting that statutory provision as your previous attorney suggests, would mean that no Sailor once they reach eighteen years of service could be involuntarily separated for misconduct. No such statutory "sanctuary" exists for cases involving misconduct and the Board determined you were properly discharged, based on the facts of your case, "under any other provision of law" as expressly permitted under 10 U.S.C. § 1176(a)<sup>3</sup>.

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<sup>2</sup> The Board also determined it was misleading to previously contend that your felony conviction was either an isolated incident, or the sole indiscretion over your entire Navy career. The Board noted that during a previous enlistment, on 27 February 1992 you received non-judicial punishment (NJP) and found guilty of both assault and disorderly conduct. The accompanying Page 13 entry expressly warned you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative separation.

<sup>3</sup> The Board determined that any suggestion that your official retirement eligibility date had passed on 27 December 2008 before the Navy separated you was determined to be unsupported by the preponderance of the evidence. As previously outlined in this letter, the Board found that your "time lost" while spent in civilian confinement in a UA status tolled your accrual of active duty service for retirement eligibility day-for-day.

The Board carefully considered your counsel's brief and 2024 certificate of achievement, and any and all matters previously submitted regarding your character and reputation, post-service conduct, educational pursuits, medical condition, and personal/professional accomplishments. Despite this evidence, the Board unanimously determined that there was no impropriety or inequity in your discharge, and the Board concluded that your serious misconduct clearly merited your discharge prior to reaching retirement eligibility. While the Board carefully considered the evidence you submitted in mitigation and commends your post-discharge good character and accomplishments, 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 and concurred with the AGC finding that your conviction for serious felonies supports your administrative separation short of retirement from the Navy. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit clemency or 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,

5/15/2025

