



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

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Docket No. 2637-25  
Ref: Signature Date

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Dear ██████████

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 7 April 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 this 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 Department of the Navy's current policies, standards, and procedures for correction of military records following the "don't ask, don't tell" (DADT) repeal of 10 U.S.C. 654 and the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice or clemency determinations (Wilkie Memo).

You enlisted in the Navy and commenced active duty on 8 September 1986. On 7 November 1988, you pleaded guilty and were convicted at Special Court Martial (SPCM). Although the documents pertinent to your SPCM are not in your official military personnel file (OMPF), 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 presume that they have properly discharged their official duties. Based on the information contained on your Certificate of Release or Discharge from Active Duty (DD Form 214), you were separated, on 18 April 1990, with a "Bad Conduct Discharge," (BCD), narrative reason for separation of "Conviction by Special Court Martial," reentry code of "RE-4," and separation code of "JJD;" which corresponds to court martial. Additionally, doctor notes contained in an official medical record

in your OMPF document that you informed your medical provider that you pleaded guilty at a SPCM for the following charges: (1) homosexual act with another person at [the] ██████████, (2) homosexual act with another person at ██████████, (3) homosexual act with another person at the ship, and (4) aggravated assault<sup>1</sup>.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilke Memo. These included, but were not limited to, your desire to upgrade your discharge characterization of service and change your narrative reason for separation, separation authority, separation code, and reenlistment code to reflect Secretarial Authority. You contend that you received a BCD for homosexual conduct after being found in bed with another seaman while onboard a ship, you were pressured into sex by the other seaman and were outranked. For the purposes of clemency and equity, the Board considered the materials you provided in support of your application; including your legal brief with exhibits.

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 SPCM conviction, outweighed these mitigating factors. Additionally, 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 provides service Discharge Review Boards with the guidance to normally 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 your conviction at SPCM, when considered in conjunction with the medical notes referencing an aggravated assault, qualified as an aggravating factor<sup>2</sup>.

While the Board carefully considered your contentions regarding the circumstances surrounding your SPCM conviction, the Board determined insufficient evidence exists to support your version of events and desired additional information about your court-martial charges; specifically, about the possible charge of aggravated assault<sup>3</sup>.

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.

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<sup>1</sup> Contrary to your statement to the medical provider, the Board noted that a Court Memorandum in your record indicates you were convicted of four specifications of consensual sodomy.

<sup>2</sup> The Board noted it was unusual for the Navy to process Servicemembers at a SPCM for consensual acts of sodomy. Further, it was also unusual that consensual homosexual acts would result in a punitive discharge.

<sup>3</sup> With respect to your trial records, the Board noted that requests concerning the military justice system and individual courts-martial records of trial are processed via Freedom of Information Act Requests (FOIA) requests to the Office of the Judge Advocate General of the Navy, Code 40, at foiamiljus@navy.mil or (202) 685-7064.

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,

4/21/2025

