



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE RD  
ARLINGTON, VA 22204

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Docket No. 3582-25  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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.

A three-member panel of the Board, sitting in executive session, considered your application on 13 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). In addition, the Board considered an advisory opinion (AO) from Commander, Navy Personnel Command and your response to the AO.

The following is the relevant factual background of your case based upon review of your naval record and/or the matters provided with your application:

1. You enlisted in the Navy and began a period of active duty on 20 April 2004. After a period of continuous Honorable service, which included multiple reenlistments, you immediately reenlisted again for a period of five years on 27 May 2016. Your new end of active obligated service (EAOS) date was 26 May 2021.
2. Following a command climate survey which revealed several allegations of sexual misconduct against you by three service members, Naval Criminal Investigative Services (NCIS) initiated an official investigation into the allegations against you on 8 August 2019.

3. Due to this pending investigation, and as directed by MILPERSMAN 1160-030, paragraph 11.f, you were not permitted to be discharged prior to your normal expiration of enlistment, for reenlistment.

4. In addition to the MILPERSMAN prohibition against your discharge and reenlistment, on 13 February 2020, your commanding officer officially placed you on legal hold pending the outcome of the NCIS investigation. This legal hold was, as indicated in subsequent correspondence from your commanding officer on 17 August 2021, communicated to the servicing Personnel Support Detachment (PSD) in ██████████ and to the command's personnel office for the express intent of ensuring each had knowledge that you were ineligible for reenlistment and as an exercise of command authority to ensure compliance with MILPERSMAN 1160-030, paragraph 18.b(1), which directs that commanding officers must ensure that improper enlistments do not occur.

5. On 24 February 2020, a brief e-mail conversation took place between your leading chief petty officer (LCPO), at the ██████████, and a chief petty officer (CPO), assigned to ██████████ with no discernable position title in his signature block. In pertinent part, your LCPO inquired whether you had any "hold status" that would preclude you from reenlisting. Notably, this inquiry occurred within two weeks of your having been placed on legal hold by your commanding officer. The CPO replied "He can re-enlist." A letter of deficiency (LOD), originating after your administrative separation board from your legal counsel, later identified the CPO as the legal chief for the command but referred to an enclosure which was not made available for review. Subsequently, your local officer-in-charge endorsed your request for reenlistment and you rapidly executed this reenlistment on 21 April 2020.

6. On 5 May 2020, via a Prosecutorial Merits Review (PMR)<sup>1</sup>, Regional Legal Services Mid-Atlantic recommended not to prefer criminal charges at court-martial, stating there was no reasonable probability of conviction. Instead, it was recommended that the command pursue appropriate administrative action.

7. On 28 September 2020, you were initially notified of processing for administrative separation by reason of misconduct due to commission of a serious offense based on the allegations investigated by NCIS. However, your legal counsel objected to the basis for separation processing, arguing that you had reenlisted and that administrative processing for misconduct which occurred during a previous enlistment was prohibited.

8. On 18 November 2020, you were re-notified of administrative separation processing by reason of erroneous enlistment. As you were entitled to a hearing before an administrative separation board, you requested a hearing. Your hearing was initially scheduled for March 2021, which was prior to the 26 May 2021 expiration of the EAOS from your previous reenlistment contract.

9. On 10 March 2021, you requested a continuance. Your request was denied and the initial hearing commenced in April 2021. At that time, your legal counsel objected to the member who

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<sup>1</sup> The PMR was not available for the Board's review.

had been appointed as president and challenged him for cause. Although the legal advisor ruled against this challenge, the hearing adjourned for a continuance at the administrative board's request and you subsequently filed a complaint under Article 138 of the Uniform Code of Military Justice (UCMJ).

10. In the process of rescheduling the administrative hearing, a new member was assigned as president of the administrative separation board. Prior to its reconvening, the period of obligated service under your previous enlistment contract expired on 26 May 2021. Additionally, on 30 June 2021, you inadvertently copied the command's staff judge advocate on an email reply to your legal counsel, which resulted in tension with respect to your presentation of character evidence during your subsequent hearing.

11. On 13 July 2021, a new administrative separation board hearing convened to consider the basis of erroneous enlistment and unanimously found that the basis of erroneous enlistment was substantiated and recommended that you be administratively separated. In its findings, the administrative board expressly noted MILPERSMAN 1910-130 specifies that an enlisted member may be separated for erroneous enlistment when the enlistment would not have occurred had appropriate directives been followed. Although it did not consider MILPERSMAN 1306-101 to preclude reenlistment, it did consider the direction [legal hold pending adjudication of misconduct allegations] from your chain of command as directive in nature. It did not make a recommendation regarding characterization of service, as honorable was the least favorable characterization available for that basis. The available records did not indicate whether MILPERSMAN 1160-030 was presented for the members' consideration.

12. On 19 July 2021, your legal counsel submitted a lengthy and detailed LOD in response to the administrative separation board's findings.

13. On 17 August 2021, your commanding officer forwarded a recommendation for your separation on the basis of erroneous enlistment, concurring with the findings and recommendations of your administrative separation board. The commanding officer also responded to your counsel's allegations of deficiency, which you had forwarded to the Bureau of Medicine and Surgery (BUMED), requesting review due to your alleged claim of disability. BUMED returned the LOD to your command, finding no reason that your case should not be processed through the convening authority. Although you asserted that the "CO's Legal Office Approved Reenlistment After Specifically Being Asked If Any Hold Status Prevented Reenlistment," your commanding officer observed that it was "apparent that not all entities involved were properly informed of the active case against [you]" at the time you submitted your request for reenlistment, to include: (1) that you had been identified on the command's "Administrative and Disciplinary List" since October of 2019 pending final resolution of your case, which included administrative disposition, and (2) that she had expressly exercised authority to retain you in a legal hold status. Your LOD further argued that the investigation was complete and that "the defect which may have prevented [your] initial reenlistment no longer exist[ed]." However, your commanding officer's recommendation for your separation observed that your assertion failed to consider her discretion in the disposition of the case, other than prosecution, to include pursuing administrative separation; in particular, for unresolved allegations of sexual misconduct offenses which trigger mandatory administrative separation

processing requirements. Additionally, your commanding officer identified this factor as rendering the evidence of the NCIS investigation appropriately submitted to the members, being that it was relevant to the administrative separation board's recommendation on your retention or discharge.

14. At the time the recommendation for your separation was forwarded to Commander, Naval Personnel Command (CNPC)<sup>2</sup>, your total service to date was 17 years and three months. The final approval for your discharge issued by CNPC, however, was not communicated via naval message until 16 May 2022.

15. In response to this message, the following day, you submitted a letter to CNPC requested to immediately terminate all involuntary separation processing; specifically, you claimed that you had attained statutory sanctuary under Title 10, U.S. Code, section 1176, having attained 18 years of active duty service effective 20 April 2022. Notwithstanding this request, you were honorably discharged by reason of erroneous enlistment on 12 July 2022.

16. Post-service, you applied to the Naval Discharge Review Board (NDRB) contending that your discharge was unjust. On 15 November 2024, the NDRB reviewed your request and noted that you had been separated with an Honorable characterization of service but had been assigned a narrative reason for separation of erroneous enlistment. In relevant part, the NDRB decision stated that:

The [NDRB] found Secretarial Authority (Best Interest of the Service (BIOTS)) is the appropriate narrative reason for separation. In making its determination, the [NDRB] considered the Applicant's exemplary service record, the history of administrative actions pursued by his command, and all pertinent regulations. Further, a member may be separated on the basis of erroneous enlistment, reenlistment, induction, or extension of enlistment when the enlistment would not have occurred if relevant facts had been known by the Department of the Navy or had appropriate directives been followed.

However, in this case, the Command used a 3 June 2021 confirmation from PERS-832 that the Applicant's previous issues during a previous military enlistment (accusations of violation of Articles 92, 120, and 131b which were investigated by NCIS) were resolved and totally unrelated to his current enlistment.

Based on clemency, as well as this interpretation of the facts you presented at that time, the NDRB determined that your narrative reason for separation should be changed to Secretarial Authority, with a corresponding separation code of JFF, and a reentry code change to RE-1. These changes, would in theory, permit you to seek to reenlist and potentially complete 20 years of active service.

You subsequently submitted your application to this Board and requested a change your narrative reason for separation from Secretarial Authority to reflect your retirement [interpreted

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<sup>2</sup> On 17 August 2021.

as transfer to the Fleet Reserve], to apply active duty service credit through 20 years of service to that effect, and to approve all applicable backpay to which you might be due incident to such corrections. These requests for relief were submitted pursuant to the relief already granted by the NDRB with respect to your narrative reason for separation, which was changed to Secretarial Authority, and your reenry code, which was changed to RE-1 to potentially permit your application to reenlist and potentially complete 20 years of active duty service. However, your chief contention is that the main injustice, namely, your discharge after accruing more than 18 years and two months of active duty service, has not been corrected. With respect to the passage of time since your discharge, you assert that you would have completed the remaining 22 months of service required to be eligible for transfer to the fleet reserve and it is an injustice to limit your relief to an opportunity to reenlist and complete the required service to attain 20 years. You argue that course of action would require you to uproot your life and family in order to reenlist.

You raised multiple contentions of error and injustice in your application in support of your requested relief. In primary part, you contend that you were wrongfully separated from the Navy under an invalid basis for separation, pursuant to defective administrative due process, and in violation of law with respect to your principal claim of being discharged within statutory sanctuary under title 10, U.S. Code, section 1176. As such, you believe that your ability to serve the final period of service, which you assert that you intended to serve, and to potentially qualify for transfer to the fleet reserve, regardless that approval of such transfer is discretionary under Secretarial Authority, were improperly and illegally terminated by your involuntary administrative separation.

You further argue that your separation is erroneous and/or unjust due to:

(1) procedural and due process violations based on legal insufficiency of notice, improper board proceedings, and withholding of evidence. You believe that the administrative separation board proceedings were procedurally flawed, due to legally insufficient, vague, and circular notice of the specific grounds for the administrative separation which resulted from your being notified on multiple occasions. You also argue the initial board president's bias, replacement of the entire board without dismissing the first hearing, providing only several days' notice for a new hearing, withholding evidence was also improper. Specifically, you allege that the government refused, contrary to rules of discovery, the Freedom of Information Act (FOIA), the Privacy Act (PA), and potentially the Systems of Records Notice (SORN), to provide your detailed military defense counsel with audio recordings from the initial recessed hearing, even after direct requests, which you believe were necessary as character evidence for the second hearing. You further allege that the vague and circular use of multiple notices for different bases of separation, as well as initial use of notification procedures with a subsequent change to board procedure rules, hindered your ability to prepare an adequate defense. Additionally, you contend that the withdraw of the notification of the misconduct basis, which occurred due to your reenlistment, constitutes the government's tacit acknowledgment of your reenlistment and, thus, invalidates any claim that you erroneously reenlisted<sup>3</sup>;

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<sup>3</sup> With respect to this specific contention, the Board observed that the question whether your enlistment was erroneous had to be formally addressed before the government would have been able to proceed with a misconduct basis under the obligated service of your valid enlistment, which did not expire until 26 May 2021.

(2) legal insufficiency of findings based on the application of an incorrect legal standard, error of law regarding “directive,” and invalid basis for separation. You believe that the findings were based on irrelevant or improperly interpreted regulations and demonstrated a misunderstanding of the legal elements required for a separation due to "erroneous enlistment." Specifically, you contend that the board made a significant legal error by concluding that a "direction" from a Navy Captain/O-6 held the same legal weight as a formal, published "directive," which you believe was the central element in the Navy's argument for erroneous enlistment. You also contend that the basis for administrative separation of erroneous enlistment was invalid, theorizing that a pending legal matter does not constitute a "defect" that would render an enlistment erroneous under the applicable regulations;

(3) government misconduct based on violation of attorney-client privilege and threats and intimidation, which you assert prevented your ability to fully present a defense. This is based on the fact that you inadvertently included the staff judge advocate (SJA) who represented the government in an email reply which you drafted and sent to your attorney. You believe that the government violated your attorney-client privilege. Specifically, after having received your disclosed communication, instead of disregarding it, you allege that the SJA used its contents to threaten and intimidate your defense counsel, chilling his ability to present a zealous defense. In this regard, you allege that the SJA found your communication with your defense counsel to be unduly familiar such that it might constitute rebuttal evidence if you were to present evidence of good military character at your administrative separation board hearing; and

(4) fundamental unfairness based on an estoppel theory due to the “legal office” confirming your reenlistment, erroneous enlistment being pretextual as a basis, violation of statutory sanctuary law, and the determination of the NDRB. You argue that the basis of "erroneous enlistment" was unjust for multiple reasons. Foremost, you believe that this basis was merely a pretext when, in reality, the Navy was attempting to separate you for sexual assault and harassment misconduct allegations from a previous term of enlistment, for which administrative separation was no longer timely and for which the PMR had recommended against prosecuting at trial. To this extent, you submitted evidence that your LCPO was explicitly informed, in writing by a representative of the command, that you could reenlist, rendering it inequitable for the Navy to separate you for an "erroneous enlistment" after being advised that you could proceed to reenlist. Additionally, you believe that the prior favorable ruling by the NDRB has already determined that the separation was an error<sup>4</sup>.

After careful review, the Board reached the following conclusions and denied your application for relief.

The Board concurred with the findings of your administrative separation board that your reenlistment on 21 April 2020 was erroneous. The Board was not persuaded your argument that the NCIS investigation had concluded by the time you reenlisted. The evidence clearly demonstrates that the NCIS investigation was still open, regardless whether NCIS was actively questioning witnesses. The NCIS investigation summary reflects that the determination of disposition of the substantiated allegations was clearly still pending legal review, which has the

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<sup>4</sup> The Board noted that it reviews your record, to include your administrative separation proceedings, *de novo* and, therefore, is not bound by the findings of the NDRB.

potential to result in requests from trial counsel for further inquiry. The Board found that this fact was the entire reason that you were placed on legal hold. The Board found it highly telling that, within two weeks of being officially placed on legal hold, you initiated your efforts to hastily secure a reenlistment which, had it been valid, would have insulated you from any administrative dispositions, to include NJP or separation on the basis of that misconduct. The Board determined your argument that your reenlistment should be viewed as evidence that you were willing to be available for trial is hollow, as you had already been placed on legal hold pending a potential court-martial and, therefore, could have readily been held past your existing five-year contract for trial. Likewise, the fact that you executed your erroneous reenlistment *prior* to the completion of the PMR further negates your argument that the matter of the misconduct allegations against you had concluded. The Board also was not persuaded by your argument that the recommendation of the PMR should be treated as a conclusive determination that there was no misconduct. The Board observed that trial counsel may recommend against prosecution for a number of reasons, to include non-availability of witnesses or requests from victims regarding their preference of disposition, none of which renders the allegations any less substantiated.

The pivotal fact with respect to your request to reenlist is that it was unequivocally prohibited by service regulations. Specifically, MILPERSMAN 1160-030 prohibited your reenlistment because of the pending investigation and unresolved potential disciplinary or administrative action. Paragraph 11 of this MILPERSMAN article is titled “Members Who May Not Be Discharged for Reenlistment.” It expressly states:

“The following members on active duty may not be discharged, prior to normal expiration of enlistment, and reenlisted: ... f. Members undergoing investigation for alleged offenses [or] awaiting non-judicial punishment or trial by courts-martial.”

Of note, this provision complies with foundational guidance in DoD Instruction 1304.26, which outlines standards for reenlistment and retention for all service branches. A pending investigation into serious misconduct, such as allegations of sexual assault, is considered a disqualifying factor that would render a service member ineligible to reenlist.

The Board found clear and convincing evidence that you were still under investigation, regardless of your claims otherwise. Thus, the Board determined the unresolved allegations against you rendered your discharge and subsequent reenlistment in April 2020 *void ab initio*, or invalid from the very beginning. Because that reenlistment was invalid from the outset, the law treats it as though it never happened at all and the Board determined it did not serve to terminate your previous enlistment since your discharge was prohibited by regulation.

However, service regulations did require that you be notified, via board procedures due to your paygrade and years of service, of processing for erroneous enlistment and that you be provided an opportunity to potentially prove that the enlistment was valid prior to it being voided. You received an administrative board hearing at which the members determined that the basis for your administrative separation processing was valid. While you argue that they improperly relied on your commanding officer’s directive to place you on legal hold as the definitive factor

in substantiating the basis of erroneous enlistment, the Board again found your argument unpersuasive. The Board determined that a commanding officer's order to place a member into a legal hold status is inherently directive in nature. Therefore, the Board found no error in the rationale expressed by the members of your administrative separation board, notwithstanding that the Board found that the most appropriate rationale supporting the basis of erroneous enlistment is the actual regulatory prohibition in MILPERSMAN 1160-030. As a result, the Board concurred that your reenlistment in April 2020 would not have happened if appropriate directives had been followed and was erroneous.

To the extent you have argued that the "defect" no longer existed and, therefore, *was* significantly changed, the Board was not persuaded. In this regard, the Board noted that its understanding and interpretation of the facts slightly differed from those documented in the NDRB decision. You have consistently contended that the lack of disciplinary or administrative action with respect to the misconduct allegations should result in your reenlistment being treated as valid. In this regard, both you and the NDRB appear to have relied on a communication from PERS-832 on 3 June 2021 that your "previous issues during a previous military enlistment ... were resolved and totally unrelated to [your] current enlistment." The Board found that this interpretation disregards the chronological reality of what actually happened. But for your securing discharge for reenlistment prior to the conclusion of the PMR, the evidence of record is clear that your commanding officer would have notified you of nonjudicial punishment and, had you refused and demanded trial, would have proceeded with *mandatory* administrative separation processing for the serious misconduct of the sexual assault allegations. However, because you erroneously secured a discharge and reenlistment prior to administrative disposition of those allegations, the defect – namely, the unresolved misconduct allegations – remained, but the question of the validity of your discharge and reenlistment had to be resolved first, before any other action could occur. The Board determined the fact that the command chose to resolve the threshold issue of the contract's validity first does not negate the other pending administrative options available to them at the time.

Thus, as the record stood at that time you were processed for erroneous enlistment, the Board found that the "current [erroneous] enlistment" was not related to the misconduct of your prior, valid contract *until* such time as it was determined either: (1) that your current enlistment was valid, at which point the misconduct would have been moot, or (2) that your current enlistment was erroneous and, therefore, invalid, at which point the misconduct would have remained tied to your remaining obligated service under your previous contract. This finding counters your assertion that the erroneous enlistment was merely a pretext to separating you for prior misconduct. In fact, had the administrative separation proceedings for your erroneous enlistment concluded prior to 26 May 2021, the Board observed you would have still had obligated service remaining under your existing contract. At that point, the government could have proceeded with expeditiously processing you for that misconduct and, in fact, would have been required by regulation to do so. However, the completion of the administrative separation proceedings for the basis of erroneous enlistment did not conclude by 26 May 2021, at which point your only valid contract expired. Thus, the Board determined the only reason that you were never ultimately processed for the misconduct which occurred during your valid enlistment is that it expired prior to the resolution of the issue of your erroneous enlistment. As such, the Board was not swayed your argument that the defect of the misconduct allegations had been resolved such

that your reenlistment was not in violation of the regulations which prohibited it. Therefore, the Board concluded that the basis of erroneous enlistment was properly and clearly substantiated.

Further, the Board acknowledges the NDRB decision to change the narrative reason for your separation from "Erroneous Enlistment" to "Secretarial Authority." The Board notes that MILPERSMAN 1160-030 provides that an improper reenlistment may be addressed under either basis. It is the Board's view that the NDRB primarily made this change for equitable reasons, as "Secretarial Authority" provides a more neutral narrative for separation. So far as the wording of the NDRB's decision might be interpreted as finding that the "defect" – or third prong of erroneous enlistment – had significantly changed, the Board does not concur with any such interpretation, as addressed in the immediate two paragraphs above. To reiterate, the Board finds that the elements for the basis of erroneous enlistment were clearly met by the evidence of record and, therefore, the narrative reason for separation of "Erroneous Enlistment" most accurately and properly describes the legal circumstances that led to your separation. Specifically, the Board found that a regulatory bar existed which rendered your enlistment contract invalid from its inception.

Nevertheless, the Board will not disturb the NDRB's discretionary change of the narrative reason for separation to "Secretarial Authority" to the extent that this change was supported by clemency considerations alone. In this regard, the Board emphasizes that this change in narrative reason does not alter the underlying facts of the case, such that you were separated for an erroneous enlistment, nor does it affect the Board's legal conclusion that your enlistment was *void ab initio*. As such, the change has no bearing on our finding, addressed in further detail below, that you were not entitled to be retained under the sanctuary provisions of title 10, U.S. Code, section 1176.

Taking into account that the delay in processing your erroneous enlistment resulted in your discharge after accruing over 18 years of service, the primary remaining issue before the Board was your contention of entitlement to retention under statutory sanctuary. After reviewing the evidence, the Board found insufficient evidence that you were entitled to be retained on active duty beyond the resolution of whether your April 2020 reenlistment was erroneous, unless (1) you had remaining obligated service under your valid enlistment contract, which expired on 26 May 2021, or (2) your reenlistment in April 2020 was found not to be erroneous. Ultimately, the Board found that you were not entitled to be retained under statutory sanctuary because your obligated service and enlistment contract expired on 26 May 2021, the unresolved sexual misconduct allegations against you prohibited any valid reenlistment beyond 26 May 2021, and your 21 April 2020 enlistment was erroneous and therefore invalid. The Board was not persuaded by the premise that your procurement of a prohibited, invalid reenlistment should result in a windfall retention which was otherwise prohibited by regulation. The Board found that the statutory interpretation you propose would defy the expressed purpose and intent of statutory sanctuary, which the legislative record clearly reflects was enacted to protect service members from separation due to force shaping actions, not to insulate them from the consequences of misconduct allegations.

To the extent that you argue the allegations were not substantiated, the Board observed that the PMR recommended administrative disposition of the allegations. It did not recommend no

action nor did it state that the allegations were clearly unsupported by evidence. Additionally, the Board considered that the NCIS investigation documents that at least one female in your command felt that you created an atmosphere of sexual harassment and another alleged feeling “sexually violated during the assault in which [you] slapped [her] butt.” While the Board acknowledged the possibility that you might have successfully defended against these allegations in an administrative separation board hearing, had such occurred, the fact remains that you deliberately pursued reenlistment while in a legal hold status and while pending investigation. As a result, as discussed above, your reenlistment contract was invalid at the time it was executed, the allegations which prohibited your discharge for reenlistment were consequentially never resolved, and your existing enlistment contract had expired by the point in time that action on your erroneous enlistment had concluded. Therefore, the Board concluded that you were properly discharged at the conclusion of the administrative separation proceedings for your erroneous enlistment and were not entitled to be retained under title 10, U.S. Code, section 1176.

Finally, the Board was not persuaded by your additional contentions regarding your due process complaints, your concerns regarding privileged communications, and your account of diverse procedural errors. In terms of notifications, the Board found no prejudice in the withdrawal of the misconduct basis notification to process the erroneous enlistment or in the renotification via board procedures for erroneous enlistment vice notification procedures. Rather, the Board observed that those changes were made to ensure you received proper due process. Likewise, the Board observed that after you objected to the member who was initially assigned as the president of the administrative board, ultimately, a new member was appointed in his place. To the extent that you submit extensive argument regarding the denial of access to requested evidence, such as the previously recorded testimony of character witnesses from the initial hearing for the misconduct basis and allegations that you were “chilled” from submitting evidence of good military character due to threats from the SJA, the Board found that presentation of character evidence had little, if any, bearing on the potential outcome of the administrative hearing to determine whether or not your enlistment was erroneous, which, if so, would result in an Honorable discharge. The fact remains that you could not have received anything less than a fully Honorable discharge since the members had no authority to recommend a lesser characterization. Further, if the members substantiated the basis for separation, they had no authority to recommend retention and were not charged with recommending a reentry code. The question before the members of your administrative separation board hearing was limited to factually determining whether or not your reenlistment was valid based upon the relevant facts. As such, the Board concluded that your concerns regarding character evidence were wholly irrelevant to the outcome of your separation proceedings. In this regard, the Board noted that you objected to the government submitting evidence regarding the investigation of the misconduct allegations against you which were, at least in part, due to the inflammatory nature of the allegations. However, the Board determined presenting evidence of the open investigation was necessary for the government to meet its burden of proof that you were, in fact, under investigation for misconduct at the time you executed your reenlistment in April 2020, that the PMR had recommended administrative disposition, and that such disposition had not occurred due to your reenlistment, thus rendering the defect substantially unchanged. Moreover, the evidence within the misconduct investigation had no bearing on your characterization of service or on the issue of retention. Therefore, to the extent that you contended your right to administrative due process was violated, the Board found

that any procedural errors were harmless with respect to the outcome of your administrative separation proceedings. To the extent that you further allege these errors were contrived in retaliation, stemming from the disposition issues which resulted from your April 2020 reenlistment, the Board noted that the NDRB's relief with respect to changing your reentry code, from "RE-4" to "RE-1," adequately remedied any adverse effect of purported pretext or retaliation. Ultimately, the Board concluded the potentially mitigating factors you provided for consideration were insufficient to render your reenlistment as anything other than erroneous, both at the time it was executed, and at the time you were administratively separated.

Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief beyond that which the NDRB has already granted.

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,

3/5/2026

