



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

██████████  
Docket No. 3801-25  
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.

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 6 June 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).

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. Navy and began a period of active duty service on 15 November 1993. Your pre-enlistment physical examination, on 19 October 1993, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. As part of your enlistment application you disclosed approximately six (6) separate traffic offenses.

On 3 March 1994, the Chief of Naval Personnel (CNP) notified your commanding officer that you failed to report your full arrest record on the DD Form 398-2 form you submitted on or about 8 July 1993. CNP noted that you failed to disclose arrest and/or convictions for: (a) Aug

92 - Assault, (b) Mar 93 - Failure to Appear, (c) 10 Jun 93 - Stealing, and (d) 21 Jun 93 - Possession of a Controlled Substance; Failure to Appear Summons for Fugitive; Improper U-turn. CNP directed your command to administratively process you for an administrative separation for a fraudulent enlistment.

In the interim, on 24 March 1994, you received non-judicial punishment (NJP) for an assault upon another shipmate. You did not appeal your NJP.

On 24 March 1994, your command notified you that you were being processed for an administrative discharge by reason of: (a) defective enlistment and induction due to fraudulent entry into the Navy as evidenced by your failure to report your complete arrest record, and (b) misconduct due to the commission of a serious offense (assault). You waived your rights to consult with counsel, submit a written statements, and to request an administrative separation board.

On 14 July 1994, the Separation Authority approved and directed your discharge for misconduct with an under Other Than Honorable conditions (OTH) discharge characterization. Ultimately, on 18 July 1994, you were discharged from the Navy for misconduct with an OTH discharge characterization and assigned an RE-4 reentry code.

On 23 April 2004, the Naval Discharge Review Board (NDRB) denied your discharge upgrade application. The NDRB stated that “verifiable proof of any post-service accomplishments must be provided in order for the Applicant to claim post service conduct and behavior as a reason to upgrade a less than honorable discharge.” The NDRB, in denying relief, noted that you did not provide sufficient verifiable documentation of good character and conduct to mitigate your active duty misconduct.

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 a discharge upgrade and your contentions that: (a) your recruiter knew all about your cases and he basically lied to you and the Government, (b) you were a section leader and cadence caller in boot camp, (c) at “A” school you graduated 3rd out of a class of 25, (d) at NJP your “A” school instructor stated that your assault was uncharacteristic for you, (e) you have not been trouble since you graduated from college, and are now in a supervisors role and have been for 20 years, and (f) you sincerely apologize for your actions and you have grown into a responsible adult with a family, and are pleading for forgiveness. For purposes of clemency and equity consideration, the Board considered the totality of your application; which consisted solely of the personal statement you included with your DD Form 149 without any other additional documentation.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. The Board determined that your Navy service records and DD Form 214 maintained by the Department of the Navy contained no known errors. Based on your precise factual situation and circumstances at the time of your discharge, the Board concluded that your command was justified separating you for both a fraudulent enlistment and misconduct.

The Board noted that a fraudulent enlistment occurs when there has been deliberate material misrepresentation, including the omission or concealment of facts which, if known at the time, would have reasonably been expected to preclude, postpone, or otherwise affect a Sailor's eligibility for enlistment. The Board determined that you had a legal, moral, and ethical obligation to remain truthful on your enlistment paperwork. The Board determined the record clearly reflected that your deliberate concealment of certain material facts regarding your criminal record/history. In making this finding, the Board noted you provided no evidence, other than your statement, to substantiate your contention that your recruiter was aware of your record of misconduct.

The Board did not believe that your record was otherwise so meritorious as to deserve a 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 determined that characterization under OTH conditions 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 determined that the record clearly reflected your misconduct involving an assault was intentional and willful and indicated you were unfit for further service. The Board also 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.

As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your pre-service intentional concealment of certain material facts and misconduct 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 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,

6/16/2025

