



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

██████████  
Docket No. 4418-25  
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 2 May 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).

You enlisted in the U.S. Navy and began a period of active duty service on 27 October 1997. Your enlistment physical examination, on 7 October 1997, and self-reported medical history both noted no psychiatric or neurologic issues, symptoms, history, or counseling.

On 22 January 1998, your command issued you a "Page 13" counseling sheet (Page 13) documenting you not meeting the Physical Readiness Program (PRP) requirements because you failed the 1.5 mile run portion of the Physical Readiness Test. On 9 May 1999, your command issued you another Page 13 documenting your failure to meet PRT requirements.

On 26 June 1999 you received NJP for: (a) being in an unauthorized absence (UA) status for forty-one (41) days, and (b) for disobeying a lawful order of a superior commissioned officer when you charged approximately \$7,836 on your U.S. Government Credit Card without authorization. You did not appeal your NJP. During the third quarter of 2000, you were

convicted at a Summary Court-Martial (SCM) of: (a) carnal knowledge, (b) indecent acts, and (c) making a false official statement. At the time of your charged offenses, you were twenty-two (22) years old.

Following your SCM conviction, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to the commission of a serious offense. Ultimately, on 1 November 2000, you were separated from the Navy for misconduct<sup>1</sup> with an under Other Than Honorable conditions (OTH) discharge characterization and assigned an RE-4 reentry code.

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 contentions that: (a) you would like your discharge to be upgraded to Honorable, primarily in order to take advantage of Department of Veterans Affairs health benefits as well as any other benefits available to with such status, (b) you were discharged for sexual acts with a minor, and the minor in question was sixteen (16) years old, and (c) it was brought to your attention that the age of consent under the Uniform Code of Military Justice was sixteen (16). For purposes of clemency and equity consideration, the Board considered the totality of the evidence you provided in support of your application; which consisted solely of the information you provided on your petition without any additional documentation for the Board's consideration.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. 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 simple fact remains is that in addition to your egregious sex offenses, you also left the Navy while you were still contractually obligated to serve and you went into a UA status without any legal justification or excuse for forty-one (41) days. The Board determined that the record clearly reflected your misconduct was intentional and willful and indicated you were unfit for further service. Moreover, the Board determined that you were found guilty of your multiple sex offenses because you were indeed guilty of them all, and the Board was not willing to re-litigate well-settled facts that are no longer in dispute from an SCM occurring over twenty-four (24) years ago. Additionally, 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.

The Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your

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<sup>1</sup> The Board noted that Block 26 of your DD Form 214 contains the separation code "HKL;" which is the code corresponding to misconduct involving sexual perversion.

overall active duty trait average calculated from your available performance evaluations during your enlistment was approximately 1.34 in conduct. Navy regulations in place at the time of your discharge recommended a minimum trait average of 2.0 in conduct (proper military behavior), for a fully honorable characterization of service. The Board concluded that your low conduct marks during your active duty career were a direct result of your pattern of serious misconduct which further justified your OTH discharge characterization.

Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities.

As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your cumulative misconduct and disregard for good order and discipline while in the Navy 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,

5/8/2025

