



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

Docket No. 5573-25

Ref: Signature Date

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 11 July 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 originally enlisted in the U.S. Navy and began a period of active duty service on 17 August 1979. Your enlistment physical examination, on 2 February 1979, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. After a period of continuous Honorable service, on 17 May 1983, you reenlisted while holding the rank of Petty Officer Third Class (E-4).

On 19 November 1989 your command added a "Page 13" entry in your service record, documenting that your command placed you on "legal hold" beyond the normal expiration of your enlistment due to pending legal action taken against you.

On or about 9 March 1990, pursuant to your guilty plea, you were convicted at a General Court-Martial (GCM) of no less than one (1) specification of sodomy involving your daughter, a child under the age of sixteen (16) years old. At the time of your charged offenses, your daughter was just shy of her ninth birthday. The Military Judge (MJ) sentenced you to: (a) a period of confinement, (b) a reduction in rank from paygrade E-6 down to Seaman Recruit (E-1), and (c) to be discharged from the Navy with a Dishonorable Discharge (DD).

On 21 June 1990, the Convening Authority (CA) approved the GCM sentence as adjudged, except suspended any confinement in excess of five (5) months. On 14 July 1990, you were released from confinement. Upon the completion of GCM appellate review in your case, you were discharged from the Navy with a DD and were assigned an RE-4 reentry code on 14 February 1991.

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 were falsely accused of crimes you did not commit, (b) your daughter recently informed you that your ex-wife told your daughter to tell the Navy and the doctors at the time that you raped her so that way your ex-wife could get more money, and (c) at the time of your GCM you did not have the evidence to prove your innocence. For purposes of clemency and equity consideration, the Board considered the totality of your application; which included your DD Form 149 and the evidence you provided in support of it.

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 to deserve an 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 the record reflected that your deviant sexual behavior involving minor children was intentional and willful and demonstrated you were unfit for further service. The Board also determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not be held accountable for your actions.

The Board was not persuaded by your claims of innocence. The Board determined that you pleaded guilty to certain sexual misconduct involving minors at your GCM because you were indeed guilty and the Board was not willing to re-litigate well-settled facts that are no longer in dispute from a final conviction at a GCM occurring over thirty-five (35) years ago.

The Board noted that a plea of guilty is the strongest form of proof known to the law. Based upon your plea(s) of guilty alone and without receiving any evidence in the case, a court-martial can find you guilty of the offenses to which you pleaded guilty. The Board noted that during a GCM guilty plea such as yours, the MJ will only accept your guilty plea once they were satisfied that you fully understood the meaning and effect of your guilty plea, and only after determining that your plea was made voluntarily, of your own free will, and with full knowledge of its

meaning and effect. On the record, the MJ would have also had you state on the record that discussed every aspect of your case including the evidence against you and possible defenses and motions in detail with your lawyer, and that you were satisfied with your counsel's advice. Further, the MJ would have also had you state on the record that you were pleading guilty because you felt in your own mind that you were guilty. Moreover, the Uniform Code of Military Justice states that during the appellate review process, the appellate court may affirm only such findings of guilty and the sentence or such part or amount of the sentence as it finds correct in law and fact and determines, on the basis of the entire record, should be approved. In other words, the appellate court has a duty to conduct a legal and factual sufficiency review of the case. If any errors or improprieties had occurred at any stage in your case, the appellate court surely would have concluded as such and ordered the appropriate relief. However, no substantive, evidentiary, or procedural defects were identified in your case. In the end, the Board concluded that any such suggestion or argument that you did not commit the offenses to which you pleaded guilty was not persuasive and entirely without merit.

The Board also noted that, although it cannot set aside a conviction, it might grant clemency in the form of changing a characterization of discharge, even one awarded by a court-martial. However, the Board concluded that despite your contentions this was not a case warranting any clemency as you were properly convicted at a GCM of unconscionable misconduct involving your minor child.

As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your misconduct involving minor children 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. 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,

7/15/2025
