



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

█
Docket No. 9012-25
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 20 March 2026. 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 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 U.S. Navy and began a period of active duty service on 21 December 1993. Your pre-enlistment physical examination, on 15 December 1993, and self-reported medical history both noted no psychiatric or neurologic issues, history, counseling, or symptoms.
2. On 8 June 1995, you received non-judicial punishment (NJP) for: (a) failing to obey a lawful order by wrongfully fraternizing with a female E-3 Sailor, and (b) two (2) separate specifications of false swearing. You did not appeal your NJP.

3. On 13 February 1998, you reported for duty on board the ██████████ (██████████) in ██████████, ██████████. On 25 February 1998 you completed and/or updated another Dependency Application/Record of Emergency Data, or otherwise known in the Navy as your “Page 2.” You listed on your Page 2 that you had been married since 27 July 1992 and you had one dependent child who was born in October 1992.

4. Civilian authorities in ██████████, ██████████ arrested and, according to the ██████████ Department of Law Enforcement (██████████) Offender Registry Services Bureau (Sexual Offenders and Predators), charged you with “lewd or lascivious offenses committed upon or in the presence of person less than 16 years of age.”¹ Your attorney, in his brief supporting your discharge upgrade petition, stated in pertinent part:

The Petitioner unknowingly met a girl who was underage at the time. They started talking, hitting [it] off, and her appearance was mature, and was under the impression she was of age. It did not result in full sexual relations...He had a court date and was sentenced to 8 months in jail.

5. On or about 9 April 1999 you commenced an unauthorized absence (UA) when you were placed in civilian confinement awaiting trial. Each day you spent in civilian confinement prior to your discharge was in a UA status day-for-day.

6. Unfortunately, documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, 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. Your Certificate of Release or Discharge from Active Duty (DD Form 214) reveals that you were separated from the Navy, on 12 July 1999, with an Other Than Honorable (OTH) characterization of service, narrative reason for separation of “Misconduct – Civilian Conviction,” separation code of “HKB,” and reentry code of “RE-4.” Your separation code is consistent with a separation for misconduct due to a civil conviction.

In your application to this Board, you express a desire for your discharge character of service be upgraded and your reason for separation, separation code, separation authority, and reentry code be changed to reflect a Secretarial Authority discharge. You contend that:

1. Granting this relief would serve the interests of equity justice, and the integrity of the military discharge review process.
2. Granting relief would also remove an undue barrier to your continued professional development and full participation in civilian life.
3. The incident leading to your discharge was isolated and uncharacteristic of your conduct before or since.

¹ Title XLVI (Crimes), Chapter 800 (Lewdness; Indecent Exposure), Section 04 (Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age).

4. You were not given the opportunity to present mitigating circumstances or to demonstrate rehabilitation while still in service.

5. In comparable cases, service members were permitted to continue serving or received more lenient administrative actions.

6. Given your service history and overall conduct, equity and fairness weigh in favor of granting the requested relief.

7. The OTH discharge does not define who you are as a person nor does it accurately reflect the core values you have consistently demonstrated throughout your life and service, and as such, no doubt should be cast on your character or integrity.

8. The circumstances surrounding your discharge do not pose a threat to the U.S. military, nor do they reflect negatively on the branch in which you served.

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

The Board initially concluded you were appropriately processed for administrative separation based on your record of misconduct. While the Board carefully considered your contention of mitigation, the Board noted you do not dispute the civil conviction that formed the basis of your administrative separation and OTH discharge. Further, to the extent you imply a mistake of fact occurred when you engaged sexually with the minor, the Board noted that the specific ██████████ criminal statute you were charged under does not authorize victim's consent as a defense and, more importantly, also does not authorize as a defense your ignorance of the victim's age, the victim's misrepresentation of their age, or your bona fide belief of the victim's age. Therefore, the Board determined the presumption of regularity applies to your administrative separation and no error exists with your record.

The Board also considered the totality of the circumstances to determine whether equitable relief was warranted in the interests of justice in accordance with the Wilkie Memo. In this regard, the Board considered, amongst other factors, your desire for an upgrade to your characterization of service and change to your reason for separation and reentry code, your previously discussed contentions, the totality of your service, the negative effect your discharge has had on your life, your rehabilitation efforts, and the passage of time since your discharge.

The Board found that the mitigating factors were not nearly sufficient to justify any equitable relief. Specifically, the Board found that the severity of your misconduct far outweighed all of the mitigating factors combined. In particular, the Board found your sexual misconduct involving a minor to be an especially aggravating factor that brought great discredit upon the Navy. Therefore, even taking into consideration all the mitigation factors in your case, the Board found that your misconduct while on active duty outweighed the mitigation evidence offered. While the Board acknowledged your post-service accomplishments and rehabilitation efforts, ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. Finally, the Board was not persuaded by your

arguments regarding comparable cases in the Navy in which members were allowed to continue serving. The Board noted that no two cases are really comparable given the obvious factual differences inherent with each individual case. Moreover, the Board was unwilling to speculate on the similarity of your case to others not in the record before the Board.

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,

3/25/2026

