



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

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Docket No: 5494-21

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 the entire record, the Board for Correction of Naval Records (Board) found the evidence submitted was 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 September 2021. 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 Navy and commenced a period of active duty on 11 May 1985. On 5 June 1986, you received nonjudicial punishment for three periods of unauthorized absence and disobeying an order. On 29 July 1986, you were issued a written warning concerning your unauthorized absences. On 12 August 1986, you received nonjudicial punishment for being derelict in the performance of your duties, misbehaving as a sentinel, and for sitting down on watch. On 26 March 1987, you received nonjudicial punishment for a three day period of

unauthorized absence and making a false statement. On 2 April 1987, you received nonjudicial punishment for failing to go to your appointed place of duty, disobeying an order, and communicating a threat. On 23 April 1987, you received nonjudicial punishment for failing to go to your appointed place of duty on three occasions, failing to obey an order on two occasions, and wrongful appropriation. On 23 April 1987, you were notified of the initiation of administrative separation processing and your rights in connection therewith. You waived your right to an administrative board. On 8 May 1987, your commanding officer recommended that you be discharged with an other than honorable characterization of service, and on 19 May 1987 you were so discharged. In 2021, you submitted a petition with this Board, which this Board reviewed and denied on 15 August 2021. In your previous petition, you made similar contentions concerning your background and your post-service activities.

The Board carefully considered all potentially mitigating factors in your petition to determine whether the interests of justice warrant relief in your case including in accordance with the Wilkie Memo. In your petition, you contend that your discharge was based on racial prejudice by a superior officer as well as disproportionate punishment. You have also included a written personal statement describing your difficult childhood, your time in the Navy, and your time post-service. In this current petition, you supplemented your prior petition with additional background information. In your previous petition, and here, you have explained that post-service, you and your wife invested in real estate, and after the real estate downturn from 2007 to 2008, you changed direction. You currently own a successful sushi restaurant in Miami. You have provided several printed articles describing your successful business, you state that you are a member of a think tank of local business leaders, and you are concerned your discharge will hamper your ability to attract investors.

In review of all of your materials, the Board did not find an injustice in your record warranting relief. The Board carefully considered the new materials that you have added to your petition. You contend that your discharge is a result of injustice based upon racial prejudice by a superior officer and disproportionate treatment. You did not provide any evidence in support of this contention, nor is there any such evidence in your naval records. By contrast, the Board observed that you received nonjudicial punishment on five occasions for a wide variety of offenses, including unauthorized absence, dereliction of duty, misbehaving as a sentinel, communicating a threat, and wrongful appropriation. The Board also observed that you received a written warning concerning your misconduct after your first nonjudicial punishment. Based on the foregoing, the Board did not find an injustice warranting relief concerning your discharge.

The Board also reviewed your post-discharge activities, as supplemented in your recent petition. The Board determined that, based on the materials that you provided and in view of the factors set forth in the Wilkie Memo, it did not find a basis on which to grant relief. In reaching its decision, the Board carefully considered your childhood in █ the hurdles you have overcome, and the journey that your life has taken since then, including your time in the Navy, in your first business venture in real estate investing after your naval service, and now your popular sushi restaurant. While your business activities post-service are commendable, the Board found that, on balance, they did not overcome the substantial misconduct that you engaged in while on active duty. Given the totality of the circumstances, as well as a review of your overall service record, the Board determined that your request does not merit relief.

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 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,

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9/27/2021

Executive Director

Signed by: █