



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: 6098-21
Ref: Signature Date

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Dear █:

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 10 November 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).

You enlisted in the Navy on 26 August 1990. During the period from 8 October 1992 to 21 October 1993, civil authorities convicted you of operating a motor vehicle under the influence of alcohol (DWI), disorderly conduct in public, drunk in public, assault and battery, two specifications of reckless driving, two specifications of driving on suspended/revoked license, illegal sunshade material, and failure to appear in court. On 2 December 1993, you received non-judicial punishment (NJP) for unauthorized absence (UA) totaling 22 days. On 3 December 1993, civil authorities convicted you of contempt of court. Subsequently, you were notified of pending administrative separation action by reason of misconduct due to commission of a serious offense/civil conviction. After you waived your rights, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge by reason of misconduct due to commission of a serious offense/civil conviction, with and other than honorable (OTH) characterization of service. The SA approved the recommendation, and on 14 January 1994, you were so discharged.

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 to upgrade your discharge and contentions that discharge was too harsh due to you serving in the Navy during wartime and experiencing stressful combat operations. The Board noted that your punishment was a direct result of your actions, which resulted in NJP and several civil convictions. The Board also noted that a Sailor's service is characterized at the time of discharge based on performance during the current enlistment. Lastly, the Board noted that there is no evidence in your record, and you submitted none, to support your contention of experiencing stressful combat operations while serving in the Navy.

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP and civil convictions, outweighed these mitigating factors. 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,

11/20/2021

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Executive Director

Signed by:

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