



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: 6607-21
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 17 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).

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 on 27 August 1979. According to the information in the record. During the period from 25 March to 1 April 1980, you received non-judicial punishment (NJP) for unauthorized absence (UA) totaling four days, three specifications of absence from appointed place of duty, and violation of lawful regulation. During the period from 2 April to 16 December 1980, you were in a UA status for 254 days. As a result, you requested a good of the service (GOS) discharge in lieu of trial by court-martial. Although the Board lacked your entire service record, the Board relied on a presumption of regularity that prior to waiving your rights, you conferred with a qualified military lawyer, at which time you were advised of your rights and

warned of the probable adverse consequences of accepting such a discharge. As a result, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge by reason of GOS in lieu of trial by court-martial, with and other than honorable (OTH) characterization of service. The SA approved the recommendation, and on 2 March 1981, you were so discharged. As stated previously, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to rebut the presumption, to include evidence submitted by the Petitioner, the Board presume that you were properly discharged from the Navy.

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 you complained to your superiors about the conditions you were working in and your complaints were ignored, your CO refuse to let you see a doctor after getting sick from doing the hazardous work, and you went UA due to being abused by his shipmates. The Board also noted your contention that your medical conditions which resulted from the hazardous working conditions is getting worse as you get older.

The Board noted that there is no evidence in your record, and you submitted none, to support your contentions. The Board also noted whether or not you are eligible for benefits to assist with your medical conditions is a matter under the cognizance of the Department of Veteran Affairs (DVA) and you should contact the nearest office of the DVA concerning your right to apply for benefits.

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your two NJPs, 254 days of UA, and request for a GOS discharge 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,

11/30/2021

Executive Director

Signed by: 