



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: 7152-21
Ref: Signature Date



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 December 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 and began a period of active duty on 28 February 1979. You subsequently completed this enlistment with an Honorable characterization of service on 1 March 1981 and reenlisted on 2 March 1981. On 31 May 1985, you received non-judicial punishment (NJP) for an unauthorized absence and failure to obey a lawful order. Additionally, on 31 March 1985, you were issued an Administrative Remarks (Page 13) counseling warning informing you that you were being retained in the naval service; however, any further misconduct may result not only in disciplinary action, but in your processing for administrative discharge. On 11 June 1985, you received your second NJP for failure to be at your appointed place of duty and failure to obey a lawful order. Additionally, on 11 June 1985, you again received a Page 13 counseling warning. On 13 August 1985, you were arrested by civilian authorities concerning writing checks with nonsufficient funds. On 4 November 1985, you received your third NJP for failure to be at your appointed place of duty. On 25 February 1986, you were convicted by civilian authorities; during your court proceedings, you entered a plea of

guilty to one count of issuing a check without funds. The court found your plea of guilty was freely and voluntarily given, and therefore accepted your plea of guilty.

On 6 May 1986, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to civilian conviction. The notification advised that if separation was approved, the least favorable description of service authorized in your case would be under other than honorable (OTH) conditions. You were advised of, and waived, your procedural rights, including your right to consult with and be represented by military counsel, and your right to present your case to an administrative discharge board (ADB). Your commanding officer (CO) then forwarded your administrative separation package to the separation authority (SA) recommending administrative discharge from the Navy with an other than honorable (OTH) characterization of service. The SA approved the CO's recommendation and directed your OTH discharge from the Navy by reason of misconduct due to civilian conviction. On 15 May 1986, 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 character of service, and your contentions that: (a) you were not convicted by a civil court and you feel that you should have been given the general discharge; (b) the judge in your civil proceedings put you on probation and told you that if you did not violate the terms of your probation (which you state you did not) you would not be convicted; and (c) the military did not want to wait the year of your probation and stated that if you were not convicted you would get a general discharge and if you were convicted you would get an Undesirable Discharge (Other Than Honorable).

The Board noted you did not submit any documentation or advocacy letters in support of your application to be considered for clemency consideration. Additionally, you were provided an opportunity to present your case before an ADB, but chose not to exercise this right thereby forfeiting your best opportunity to receive a better characterization of service. Based upon this review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by three NJPs and a civil conviction, outweighed these mitigating factors. About your contention concerning your civilian conviction, the board noted your civil court proceedings in which you pled guilty to one count of issuing a check without funds. There is no evidence in the record and you did not provide any that contradicts this outcome. 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,

12/25/2021

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Executive Director

Signed by: █