



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: 7604-21
Ref: Signature Date



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 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 3 January 2022. 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, 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 served an honorable period of active duty in the Navy Reserve from 1 June 1970 to 2 June 1971 and commenced a period of active duty on 4 July 1972. On 19 January 1976, you submitted a letter of resignation from the naval service due to your goals being in conflict with those of the military. On 19 February 1976, Chief, Bureau of Medicine and Surgery, recommended your resignation not be accepted. Chief of Naval Personnel (CNP) disapproved your request on 8 March 1976. On 29 June 1977, you received nonjudicial punishment (NJP) for two (2) specifications of wrongfully and knowingly depositing in the U.S. Mail for mailing and delivering a letter containing libelous and obscene matters, and one specification of conduct unbecoming an officer by wrongfully engaging in an adulterous affair involving the mother of one of your pediatric patients and the wife of an enlisted Marine. Further, you were married at the time of the misconduct. You received a punitive letter of reprimand (LOR) on 30 June 1977, and appealed your NJP on the grounds that it was unjust. Specifically, you questioned the jurisdiction of the officer who imposed NJP and contended your NJP was unjust in that it was a personal matter with

no connection between your service in the Navy and the misconduct charged. Said appeal was subsequently denied.

On 22 August 1977, you submitted a letter of resignation from the naval service and on 21 September 1977, CNP requested the convening of a board of officers/inquiry to consider your case. You were directed to show cause for retention before a Board of Inquiry (BOI). The BOI convened on 2 November 1977 and the members unanimously found that you committed the misconduct and that your performance as a naval medical officer was compromised by your activities which constituted moral and professional dereliction. The members unanimously recommended that you be separated from naval service under conditions other than honorable on the basis of moral and professional dereliction. On 5 January 1978, you were examined and found physically qualified for separation. You were separated on 6 January 1978 with an other than honorable characterization of service.

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 your contentions that: (1) you made multiple medical helicopter flights without hearing protection which led to hearing loss/tinnitus, which appeared during his second period of service; (2) you were offered a general (under honorable conditions) discharge but did not agree to its acceptance and instead chose to let your case proceed to NJP; (3) your NJP did not honor your meritorious professional service over considerations of shortcomings in your personal life; (4) you accepted your OTH discharge unaware of the possible long term consequences; (5) your service was always honorable and meritorious as you never shirked your professional responsibilities; and (6) your characterization of service prevents you from obtaining veterans administration benefits specific to your hearing loss.

Based upon this review, the Board concluded these potential mitigating factors were insufficient to warrant relief. Specifically, the Board considered the totality of the circumstances to determine whether relief is warranted in the interests of justice. These included, but were not limited to, your contentions noted above. Additionally, the Board considered your submission of supporting documentation. Based upon this review, the Board concluded that the potentially mitigating factors in your case were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP and BOI proceedings, outweighed these mitigating factors.

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,

2/10/2022

