



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: 7782-21
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 you did not file your application in a timely manner, the statute of limitations was waived in accordance with the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo). A three-member panel of the Board, sitting in executive session, considered your application on 24 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 this 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 Kurta Memo, and 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 27 September 1967. Per your Enlisted Performance Record (NAVPERS 601.9), you received a civil conviction on 27 April 1970. Unfortunately, additional information was not found in your official military personnel file (OMPF). On 15 May 1971, you were tried and convicted in the state of Mississippi on charges of carrying a concealed weapon, reckless driving, and cruelty to dumb animal. You were sentenced to pay a \$100 concealed weapon fine, a \$25 reckless driving fine, and a \$215 cruelty to dumb animal fine. Despite the aforementioned convictions, you were allowed to remain in the Navy. On 20 April 1987, your application for transfer to the fleet reserve was approved followed by your enlistment extension of 17 September 1987. However, on 29 January 1988, naval message R 291845Z JAN 88 captures the cancellation of your fleet reserve transfer due to an impending court-martial. On 4 March 1988, you were found guilty at a general court-martial (GCM) of committing indecent acts with a child/children and two specifications of taking

indecent liberties with a child. You were sentenced to be confined for two (2) years, to forfeit \$300.00 pay per month for two (2) years, to be reduced in rank to E-1, and to be discharged from the Navy with a punitive discharge; specifically a bad conduct discharge.

On 5 August 1988, you surrendered on board naval station █ after serving a prison term for indecent liberties with a child (minor) in █. This charge and the victim was unrelated to the incidents specific to your GCM. On 2 December 1988, United States Navy-Marine Corps Court of Military Review (NMCCMR) affirmed the findings and sentence of your GCM. You were discharged with a BCD characterization of service on 26 July 1991. You subsequently petitioned Navy Clemency and Parole Boards and the Board for Correction of Naval Records.

The Board carefully reviewed your application, weighed all potentially mitigating factors, and considered your position in regards to the Wilkie memo, specifically regarding second chances and the restoration of rights forfeited as a result of such conviction. Additionally, the Board considered your contention of new and other favorable evidence since 1988; such as your subsequent record, your admission to the offenses of 1987, the non-violent nature of the offense(s), the passage of time since the offense without further offense(s), your retirement eligibility in 1987, old age, your otherwise excellent Naval career, and your need for VA benefits. The Board also considered your counsel's extended illness and hospitalization. Further you provide: (1) you desire to have your characterization of service upgraded; (2) you enlisted in the Navy reserve, eventually enlisting and serving until October 1987 accruing 20 years towards retirement; (3) you eventually attained the grade of E-7 with an ending evaluation documenting your "outstanding professionalism and knowledge and exceptional techniques contributed significantly to the operations and missions accomplishment ...the highest degree of professionalism"; (4) during your entire career you had no Article 15 Nonjudicial Punishments and your early marks averaged 3.5 then 4.0 as an E-7; and (5) you extended your enlistment by two (2) months to reach retirement, began out-processing, received fleet transfer orders, and were concluding final pay. Subsequently, you acknowledge charges against you were preferred, your transfer orders to fleet reserves were cancelled, and your enlistment contract was not extended. While the Board considered your allegations against your civilian defense counsel and Naval Investigative Service agents, they were unable to substantiate any of your claims as this Board is not an investigating agency nor does it have the resources to investigate unsubstantiated allegations.

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 your GCM and civilian conviction, outweighed these mitigating factors. Additionally, the Board concluded that your conduct was a significant departure from that expected of a Sailor and, when weighed against the brevity of your service, deserved a BCD characterization of service. Therefore, the Board found that you were appropriately discharged and, due to the severity of the specifications of your military and civilian convictions, found clemency unwarranted. Accordingly, given the totality of the circumstances, the Board determined 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,

2/14/2022

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Executive Director

Signed by: █