



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: 343-22
Ref: Signature Date



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 16 February 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, 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 entered active duty with the Navy on 22 August 1980. On 14 September 1981, you received non-judicial punishment (NJP) for two specifications of unauthorized absence (UA) totaling two days. On 8 November 1981, a summary court-martial (SCM) convicted you of UA for one day, assault consummated by a battery, and two specifications of breaking restrictions. During the period from 28 December 1981 to 5 February 1982, you received two NJPs for 40 specifications of absence from appointed place of duty, resisting arrest, and making a false official statement. Subsequently, you were notified of pending administrative separation action by reason of frequent involvement with civil/military authorities.

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 frequent involvement with civil/military authorities with an other than honorable (OTH) characterization of service. The SA approved the recommendation, and on 26 February 1982, 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 your contentions that your discharge was racially motivated, you did not fully understand your OTH discharge, and you were an 18-year-old kid.

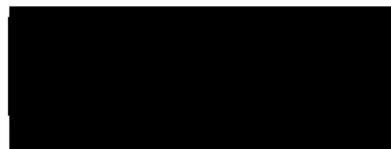
The Board noted that there is no evidence in your record, and you submitted none, to support your contention that your discharge was racially motivated. The Board also noted the record contains documented evidence, which is contrary to your contention that you did not fully understand your OTH discharge. The record clearly shows that on 26 February 1982, you were counseled and acknowledged not being recommended for reenlistment due to misconduct frequent involvement. Lastly, the Board noted that the evidence of record did not show that you were not responsible for your conduct or that you should not be held accountable for your actions.

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 three NJPs and SCM conviction, outweighed these mitigating factors. As a result, when weighing the seriousness of your misconduct against your active duty service, the Board concluded that the preponderance of the evidence supports a finding that your conduct was a significant departure from that expected from a Sailor and merits an Other than Honorable characterization of service. 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,

2/23/2022

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Executive Director

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