



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

█
Docket No: 1051-22
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 2 March 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).

You entered active duty with the Navy on 5 July 1989. During the period from 20 November 1989 to 3 July 1990, you received three non-judicial punishments (NJP) for two specification of assault, absence from appointed place of duty, disobeying a lawful order, underage drinking, and unauthorized absence (UA) totaling one day and 15 and half hours. On 19 February 1991, a summary court-martial (SCM) convicted you of UA totaling 31 days. Subsequently, you were notified of pending administrative separation action by reason of misconduct due to a pattern of misconduct. After waiving your rights, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge by reason of misconduct due to a pattern of misconduct with and other than honorable (OTH) characterization of service. The SA approved the recommendation, and on 12 April 1991, 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 in addition to your contentions that you were not given a chance to testify in your defense and need Department of Veterans Affairs (DVA) benefits.

The Board noted that there is no evidence in your record, and you submitted none, to support your contention of not being allowed to testify in defense of your misconduct. The Board also noted that the record shows that you were notified of and waived your right to present your case to an Administrative Discharge Board (ADB). In doing so, you gave up your first and best opportunity to advocate for retention, assistance, or a more favorable characterization of service. Lastly, whether or not you are eligible for benefits is a matter under the cognizance of the DVA, and you should contact the nearest office of the DVA concerning your right to apply for benefits. If you have been denied benefits, you should appeal that denial under procedures established by the DVA.

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that the seriousness of your misconduct, as evidenced by your three NJPs and SCM conviction, outweighed these mitigating factors. As a result, when weighing the seriousness and frequency 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,

3/9/2022



Executive Director

Signed by: 