



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: 2754-22
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 initial 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 reconsideration application on 18 May 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 enlisted in the Navy Reserve and commenced a period of active duty on 15 August 1985. Your enlistment physical, on 8 August 1985, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms.

On 3 February 1986, your command issued you a "Page 13" counseling warning (Page 13) noting your failing to go at the time prescribed to your appointed place of duty. The Page 13 expressly warned you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative separation. On 21 March 1986, your command issued you a Page 13 documenting your willingness to disobey orders and regulations, and also for questioning the authority of senior students and staff. The Page 13 expressly warned you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative separation.

On 25 April 1986, you received non-judicial punishment (NJP) for failing to obey a lawful written order and unauthorized absence (UA). You did not appeal your NJP. On 9 May 1986, you received NJP for a failure to obey a lawful written order, two separate UA specifications, and for the misbehavior of a sentinel for sleeping on post as fire and security watch. You did not appeal your second NJP.

On 14 May 1986, you were notified of administrative separation proceedings by reason of misconduct due to the commission of a serious offense, and misconduct due to minor disciplinary infractions. You elected your right to submit a statement to the separation authority, but waived your rights to consult with counsel and to request an administrative separation board. Ultimately, on 10 June 1986, you were discharged from the Navy for misconduct with an Other Than Honorable (OTH) characterization of service and assigned an RE-4 reentry code.

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: (a) your NJP for falling asleep on fire watch was after the cadre had you up all night looking for a stolen wallet, and (b) all of your trouble started after your return from convalescent leave to heal your jaw. However, given the totality of the circumstances, the Board determined that your request does not merit relief.

The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that characterization under OTH conditions is generally warranted for misconduct and is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor. The Board determined that the record clearly reflected your misconduct was intentional and willful and indicated you were unfit for further service. Moreover, the Board noted that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions.

The Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average calculated from your available performance evaluations during your enlistment was 2.8 in conduct. Navy regulations in place at the time of your discharge required a minimum trait average of 3.0 in conduct (proper military behavior), for a fully honorable characterization of service. The Board concluded that your conduct marks during your active duty career were a direct result of your serious misconduct.

The Board also noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating VA benefits, or enhancing educational or employment opportunities. The Board carefully considered any matters submitted



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regarding your character, post-service conduct, and personal/professional accomplishments, however, even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting clemency in the form of an upgraded characterization of service. Accordingly, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your serious misconduct clearly merited your receipt of an OTH, and that such discharge was in accordance with all Department of the Navy directives and policy at the time of your discharge.

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,

6/10/2022

