



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

[REDACTED]
Docket No: 2755-22
Ref: Signature Date

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your father's naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your father's 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 27 April 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 1 August 1972. During the period from 20 July to 2 November 1973, you received five non-judicial punishments (NJP) for four specifications of failure to go to appointed place of duty, willful disobedience of a petty officer, and unauthorized absence for three days. On 17 June 1974, a special court-martial (SPCM) convicted you of UA totaling 29 days, absence from appointed place of duty, and two specifications of missing ship's movement. You were sentenced to confinement for 30 days, reduction to E-1, and a Bad Conduct Discharge (BCD) which was suspended for six months.

However, on 10 December 1974, you received NJP for being in a UA status for 48 days. As a result, your suspended BCD was vacated. After the BCD was approved at all levels of review, on 22 July 1975, 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 contentions that you made two west pack tours to Vietnam and served at the gulf of Tonkin twice, that you faced racism from your officers, that your misconduct did not deserve a BCD, and that you need Department of Veterans Affairs (DVA) benefits due to your age.

The Board noted that a Sailor's service is characterized at the time of discharge based on performance during the current enlistment. The Board also noted that there is no evidence in your record, and you submitted none, to support your contention that your officers were racist toward you. Finally, 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 your misconduct, as evidenced by your five NJPs and SPCM conviction, outweighed the mitigating evidence in your case. In addition, the Board was not persuaded by your assertion that your misconduct did not deserve a BCD. The record clearly shows you were convicted by a SPCM for multiple serious offenses, which resulted in a BCD sentence. 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 a BCD. In making this finding, the Board considered you were given a second chance when your BCD was initially suspended before you committed additional misconduct that resulted in its vacation. Additionally, the Board noted you did not submit any post-discharge advocacy letters for clemency purposes. Therefore, 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, 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,

5/11/2022

A large black rectangular redaction box covering the signature of the Executive Director.

Executive Director

Signed by:

A black rectangular redaction box covering the name of the Executive Director.