



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: 2773-22
Ref: Signature Date

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Dear █

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 15 June 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).

After two periods of honorable service, you reenlisted in the Navy on 16 December 1983. On 8 November 1984, you received non-judicial punishment (NJP) for wrongful use of marijuana. On 6 February 1986, a special court-martial (SPCM) convicted you of disrespect toward a superior chief petty officer, disobeying a lawful order, assaulting a petty officer, wrongful use of marijuana, and two specifications of communicating a threat to injure. You were sentenced to confinement for 90 days, reduction to E-1, and a Bad Conduct Discharge (BCD). After the BCD was approved at all levels of review, on 30 November 1988, 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 your misconduct was a result of dealing with stress and you asked for weekly urinalysis testing but was denied. The Board also noted your contentions that you have prior honorable service, made the rank of E-5, and your post-discharge employment as a bus operator. The Board noted you did not submit any documentation or advocacy letters to be considered for clemency purposes.

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 NJP and SPCM conviction, outweighed the mitigating evidence in your case. In making this finding, the Board considered the seriousness of your misconduct and determined that it showed a complete disregard for military authority and regulations. In addition, the board found that the charges for which you were found guilty at your SPCM showed a complete disregard for military authority and regulations regardless of the level of stress you may have been experiencing. In addition, the Board commended your post service conduct but, ultimately, determined it was insufficient to mitigate the seriousness of your misconduct. Finally, the Board considered your arguments regarding weekly urinalysis testing but determined it was your responsibility to follow the rules and regulations regarding drug abuse. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Sailor and continues to warrant a BCD. After applying liberal consideration, 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,

6/27/2022

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Executive Director

Signed by: █