



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: 2784-22
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 6 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).

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 enlisted in the U.S. Navy (USN) and began a period of active duty on 5 November 1987. On 24 October 1988, you received nonjudicial punishment (NJP) for violating a lawful general regulation. On 20 May 1992, you received a civilian conviction for failing to obey a signal/sign/markings. On 13 June 2003, during an investigation of fraud against the U.S. Government, you signed a sworn statement admitting to signing Department of Veterans Affairs Tuition Assistance (TA) authorization forms without examining them. On 8 July 2003, you were indicted in a civilian court on one count of Conspiracy to Commit Theft of Government Property and one count of Theft of Government Property by Aiding and Abetting in federal court. On

14 April 2004, you received nonjudicial punishment (NJP) for violating a general regulation by engaging in an inappropriate relationship with a delayed entry program member while serving as Recruiter-in-Charge. Your commanding officer (CO) recommended to the separation authority that your reenlistment request be denied adding, “[f]our other members of this command were implicated in this indictment. These four members admitted their guilt and involvement in this illegal activity. Three of the four members were administratively separated with General Under Honorable Discharge and the other received an Other Than Honorable Discharge. In ██████████ ██████████ case, I decided to give the civilian court system time to conclude its process before taking action. ██████████ court date has been continually postponed and it is my understanding that the investigation has been expanded. Because of this, it is doubtful that his case will be tried prior to his expiration of service, which is 16 August 2004. According to the Federal attorney involved in this case, ██████████ is not allowed to leave the ██████████ area. Due to ██████████ personal misconduct as a Recruiter-in-Charge resulting in NJP and his inability to transfer PCS (permanent change of station) due to his alleged involvement resulting in federal indictment, I believe it is in the best interest of the Navy to deny reenlistment and honorably discharge him upon his expiration of service.” On 21 April 2004, administrative remarks document “several attempts to contact member have been unsuccessful and signed copy of DD Form 214 has not been received by PSD (personnel support detachment) ██████████ Service Record has been closed and DD Form 214 distributed in accordance with BUPERSINST 1900.8A this date.” In July 2004, the separation authority agreed with your CO and, on 16 August 2004, you were so discharged by reason of non-retention on active duty with an RE-4 (not eligible for reenlistment) 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, your desire to change your separation and reenlistment codes and your statement that, “I served 17 years in the Navy and my dream was to retire. I was not afforded that opportunity. Who gets out when they have 3 years left to a lifetime of benefits? Due to that separation code, they say I owe debt. I served 17 years in the Navy and received an honorable discharge, along with separation pay. Then they issued a separation and reenlistment code that does not line up with my honorable discharge. My DD214 was never presented to me, I dispute the claim and refuse to sign. I didn’t come into possession of my DD214 until years later. I didn’t realize the separation code was triggering a debt. It doesn’t make sense- I received separation pay and would’ve preferred to have retired. I feel like my time was in vain and didn’t mean anything.” For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

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 civilian conviction and NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and whether it supported the separation and reenlistment codes assigned at the time of your discharge. Ultimately, the Board found your Commanding Officer’s rationale for denying you reenlistment to be reasonable and based on reliable evidence of misconduct. Further, the Board noted an RE-4 reenlistment code is required when an individual is separated at the expiration of his term of active obligated service and is not recommended for reenlistment. As a result, the Board concluded your

misconduct made you unsuitable for continue naval service and continues to support the assigned separation and reenlistment codes. After applying liberal consideration, the Board did not find evidence of an error or injustice that warrants changing either code or granting clemency in your case. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

In reviewing your record, the Board noted that as a result of your prior honorable service, you may be eligible for veteran's benefits. You should contact the nearest office of the Department of Veterans Affairs if you desire clarification about your eligibility for those benefits.

You are entitled to have the Board reconsider its decision upon the 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,

6/29/2022

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