



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: 3598-22

Ref: Signature date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 13 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, 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 and began a period of active duty on 6 April 1973. On 23 August 1973, you received nonjudicial punishment (NJP) for assault and possession of a dangerous weapon. On 9 January 1975, you received a second NJP for failure to obey a lawful order and were assigned a suspended reduction in paygrade to E-3. On 28 March 1975, you began a period of unauthorized absence (UA) which lasted 75 days and resulted in your apprehension by civil authorities. As a result, on 1 July 1975, the suspension of your paygrade reduction was vacated and you were reduced to E-3. On 10 July 1975, your commanding officer (CO) recommended a trial by special court martial (SPCM) for a period of UA. On 11 July 1975, you requested an undesirable Good of the Service (GOS) discharge from service in lieu of trial by court martial. On 22 July 1975, your CO recommended approval of your request for an undesirable discharge in lieu of trial by court martial. On 23 July 1975, the discharge authority approved your request for an undesirable discharge for the GOS in lieu of trial by court martial. On 25 July 1975, you were 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 for a discharge upgrade and assignment of paygrade E-4 along with your contentions that your mother was suffering from a medical condition at the time of your discharge, that your brother could no longer take care of your mother since he was incarcerated and that your rank on your Report of Separation from Active Duty (DD Form 214) is incorrect. 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 NJPs and GOS discharge, outweighed these mitigating factors. First, the Board considered the seriousness of your misconduct and the likely negative impact it had on the good order and discipline of your command. Further, the Board noted that your long term UA ended with your apprehension by civilian authorities. Second, the Board found no error with the assignment of paygrade E-3 on your DD Form 214 based on evidence you were properly reduced in paygrade from E-4, on 1 July 1975, pursuant to your second NJP. Third, the Board found no evidence to support your assertions and concluded, in any case, it would not excuse your conduct that formed the basis for your two NJPs. Finally, the Board determined you already received a large measure of clemency as a result of the Navy's decision to administratively process you for the GOS in lieu of trial by court martial. Based on the Navy's decision, the Board determined you were likely spared a punitive discharge along with the stigma of a court martial conviction. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization. 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 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,

7/4/2022

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Executive Director

Signed by: █