



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: 3786-22

Ref: Signature date



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 8 August 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).

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) 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 Navy and began a period of active duty on 12 January 1982. On 13 July 1984, you began a period of unauthorized absence (UA) which lasted 1564 days and resulted in your apprehension by civilian authorities. On 23 November 1988, you were convicted by special court martial (SPCM) for the period of UA. You were sentenced to a Bad Conduct Discharge (BCD), confinement at hard labor, and forfeiture of pay. On 21 June 1989, your SPCM sentence was affirmed and approved. On the same date, you were discharged with a BCD characterization by reason of conviction by SPCM.

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 contentions that you had a good service record, were not offered any resources to take care of your children, were not given any assistance or solutions to your issues, and that your discharge characterization was too harsh. 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 SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct that consisted of a period of UA lasting over four years. Additionally, the Board considered the discrediting effect your apprehension by civilian authorities had on the Navy. Ultimately, the Board was not persuaded by your arguments in extenuation and found no evidence that you sought assistance from your chain of command prior to going UA. 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 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,

8/25/2022

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