



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: 4233-22
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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 18 July 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 this 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 Kurta Memo and 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 Navy in 28 November 1980 and completed a period of honorable service on 10 May 1984. You commenced a second period of active duty on 11 May 1984. On 21 August 1986, you were found guilty at a special court-martial (SPCM) of dereliction in the performance of your duties and 82 specifications of signing an official record with intent to deceive. Specifically, you were found guilty of improperly storing and/or disposing classified material. You were sentenced to be reduced in rank to E-1 and to be separated with a Bad Conduct

Discharge (BCD). On 24 April 1987, your sentenced was affirmed and, on 13 October 1987, 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: “A recent discovery (November 2021) of a document from the original Naval Investigative Service (NIS) investigation held in 1986 revealed that there was information available to substantiate my initial claim that I, along with others, were following the orders and direction of a superior officer when the infraction resulted in my trial by Special Court-Martial and my subsequent Bad Conduct Discharge.” The Board also considered your statement explaining the circumstances of your case. For purposes of clemency consideration, the Board noted you provided supporting documentation describing post-service accomplishments and 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 and the fact it included lying about the disposition of classified material. Further, the Board reviewed the evidence you submitted and did not find it persuasive. The Board noted that this evidence was available at the time of your SPCM conviction and appellate review. Additionally, the Board did not find any evidence that absolved you of your conduct. As a result, the Board concluded your conduct constituted a significant departure from the expected of a Sailor and continues to warrant a BCD. While the Board commends your post-discharge good character and accomplishments, 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,

8/5/2022

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Executive Director

Signed by: █