



**DEPARTMENT OF THE NAVY**  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

█  
Docket No: 4653-22  
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 you did not file your application in a timely manner, the statute of limitations was waived in the interests of justice. 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 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo).

You enlisted and entered a period of active duty in the Navy on 28 September 1962. On 14 December 1963, you were apprehended by civil authorities and confined at the city jail. On 16 December 1963, you pled guilty to disorderly conduct and were returned to your command. You received nonjudicial punishment (NJP), on 17 December 1963, for a 4.5 hour unauthorized absence (UA) and conduct of a nature to bring discredit on the Armed Forces in violation of Articles 86 and 134, Uniform Code of Military Justice (UCMJ). On 16 February 1964 and 1 February 1965, you received a second and third NJP for one day periods of UA in violation of Article 86, UCMJ. On 20 August 1965, you entered another period of UA. On 26 August 1965, you were apprehended by civil authorities and charged with robbery of a taxicab. On 8 October 1965, you pled guilty to robbery and were sentenced to three years of probation on condition you pay a fine and penalty assessment. Your absence, to include the incident and civilian conviction, resulted in a period of UA for a total of 45 days. On 23 November 1965, you were convicted by special court martial (SPCM) of two specifications of UA, in violation of Article 86, UCMJ.

You were sentenced to confinement at hard labor for one month, forfeiture of pay of \$91 for one month, and reduction in rank to the paygrade of E-2. On 5 May 1966, an administrative discharge board (ADB) convened to consider whether you should be retained in service. During the ADB proceeding, your defense counsel called your civilian probation officer as a witness who testified regarding a statement you made to him. His testimony stated in pertinent part:

“when I interviewed [Petitioner], he was very frank at that time, in saying that when he entered the car, he knew what was planned and I felt at that time that this indicated some evidence of character, because many of my hardened criminals tell all kinds of wild stories and I thought that he was honest and forthright in pleading his guilt and therefore there was a chance for him and it was one of the elements on which I based my recommendation for his continuance in the service.”

At the conclusion of the proceeding, the ADB members substantiated that you had been convicted of a civil offense and recommended your discharge with an Other Than Honorable (OTH) characterization of service. On 1 July 1966, 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, desire to upgrade your discharge and your post-service accomplishments. In addition, the Board considered your contentions that your SPCM was improperly convened by a Lieutenant who was not an SPCM convening authority; that the SPCM was unnecessary and had the purpose of coercing you into signing an ADB; that an ADB did not occur, and based on notification procedures only, you should have received a characterization of service not less than a General (Under Honorable Conditions); that the presumption of regularity is negated by an incomplete record; that post-service conduct warrants clemency in accordance with the Wilkie Memo; and that drugs, alcohol, and youthful indiscretion contributed to your misconduct. For purposes of clemency consideration, the Board noted you provided supporting documentation describing post-service accomplishments but no 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, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the discrediting effect your conduct had on the Navy. In its deliberations, the Board considered the declaration you submitted with your application and the ADB record of proceedings. The Board found the ADB record of proceedings to be persuasive because it was contemporary in time with the civilian conviction. In particular, the Board noted that your defense witness, the civilian senior probation officer, testified that you stated that when you entered the taxicab, you knew that the intent was to rob the driver. Although the ADB record is clear that you did not participate in assaulting the driver, it also indicates you did not assist him. Furthermore, the Board examined each contention regarding procedural error and found those contentions without merit based on your record of service. Specifically, the Board found that your administrative separation for civil conviction was supported by the record of conviction for robbery and the ADB record. Further, the Board

noted that you were afforded the necessary due process rights required to assign an OTH characterization of service. 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. While the Board commends your post-discharge good character, 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,

8/12/2022

