



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

██████████  
Docket No. 4777-22  
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 the entire record, the Board for Correction of Naval Records (Board) found the evidence submitted was 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 3 January 2023. 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). In addition, the Board considered the advisory opinion (AO) furnished by a qualified mental health professional dated 21 November 2022, which was previously provided to you. Although you were given 30 days in which to submit a response, you did not do so.

You enlisted in the U.S. Navy on 27 December 1972. From 2 September 1974 to 14 March 1975, you received nonjudicial punishments (NJP) on two occasions for failing to obey an order and being in an unauthorized absence (UA) status. You were reduced in rate to RMSN/E-2 as a result of your second NJP; however, the reduction was suspended for six months. Additionally, from 23 April 1975 to 26 July 1975, you were in a UA status and declared a deserter. As a result, on 1 August 1975, the suspended reduction in rate was vacated. On 19 August 1975, you were convicted at Summary Court-Martial (SCM) for being UA. You were sentenced to confinement with hard labor for 20 days, forfeitures of pay for one month, and reduction in rate to RMSR/E-1. On 15 September 1975, you were administratively separated for Convenience of the Government and discharged with an Honorable characterization of service.

In order to assist it in reviewing your petition, the Board obtained the 21 November 2022 AO of a qualified medical professional. Regarding your assertion that you had mental problems not addressed at the time prior to discharge, which might have mitigated the misconduct that led to your reduction in rate, the AO noted you did not provide clarifying information about your purported mental problems and how it affected your ability to perform your duties. The AO further noted that there is insufficient evidence of a mental health condition experienced during military service and insufficient evidence that your misconduct could be attributed to a mental health condition.

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 contentions that there were prejudicial instances throughout your enlistment, your performance was good at various instances, you were not properly screened for mental-health issues prior to your discharge, and your Service record and current Veterans Administration mental treatments over the years showed your difficulties in life from 1975 and beyond.

The board noted there was no evidence to support your contention of a mental health condition and you did not submit post-service documents or advocacy letters for clemency consideration. 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 multiple NJPs, outweighed these mitigating factors. Additionally, the Board concurred with the AO that you provided no evidence of mental health problems during your career or that the purported mental health mitigated your misconduct. The Board further determined that based on the evidence provided, the punishment you received at your SCM was not in error. 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,

1/30/2023

