



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

██████████
Docket No: 5519-22
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 you did not file your application 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 7 October 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, 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 in the Navy and began a period of active duty on 10 October 1990. In December 1991, you accepted nonjudicial punishment (NJP) for Article 86 following an hour of unauthorized absence, for which you received 45 days of restriction and extra duties, and you were counseled regarding the revocation of your ordnance certification due to incompetence and unreliability. The following month, you received a second NJP for a violation of Article 92 due to failure to obey a regulation or general order. Approximately seven months later, you accepted a third NJP for another violation of Article 92 due to dereliction of duty, with a punishment that included a written reprimand. On 17 August 1992, following your third NJP, you were counseled regarding your pattern of misconduct and advised that, although you were being retained, further misconduct could result in administrative separation. Notwithstanding those warnings, you were subject to a fourth NJP several weeks later for Article 134, breaking restriction, and Article 121, larceny. Upon notification of administrative board procedure proposed action to separate you for your pattern of misconduct, you elected not to consult legal counsel and waived your right to request a hearing before an administrative board. The recommendation for your separation cited the four NJPs you incurred during that past year along

with your history of “no response to counseling,” and recommend you be discharged under Other Than Honorable (OTH) conditions. On 30 October 1992, you were discharged with an OTH following approval of your separation by Commander, Navy Personnel Command.

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 your contentions that you were not a thief and have paid enough for the mistakes of a stupid kid. 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, outweighed these mitigating factors. Regarding your dispute of the final Article 121, larceny, charge, the Board noted that final offense was preceded by at least three prior offenses. Likewise, the Board observed that, in light of your assignment at that time to an aviation squadron, you had the right to refuse NJP and demand trial by court-martial if you desired to contest your guilt as to that charge; however, you elected to accept NJP at which you were found guilty of that offense. Therefore, the Board found no evidence of error or injustice regarding the offenses for which you accepted NJP. Additionally, the Board considered your appeal for clemency based on youthful indiscretion and the passage of nearly 30 years since your discharge; however, as discussed above, the Board noted that you did not submit any evidence of post-discharge conduct or character in support of your request for clemency, which the Board found would be necessary for a potentially favorable decision. Finally, the Board also noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. 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. Even in light of the Wilkie Memo and reviewing the record holistically, 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 is attached 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,

10/21/2022

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Executive Director
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