

## **DEPARTMENT OF THE NAVY**

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

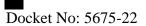
> Docket No: 5675-22 Ref: Signature Date



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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 19 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 27 February 1978. On 26 July 1978, you received non-judicial punishment (NJP) for wrongful possession of marijuana. Additionally, you were issued an administrative remarks (Page 13) counseling concerning deficiencies in your military behavior. You were advised that any further misconduct of a discreditable nature with either civilian or military authorities may be grounds for administrative separation. On 30 November 1978, you were convicted by a summary court-martial (SCM) of five specifications of failure to go to your appointed place of duty and two specifications of unauthorized absence (UA) totaling 30 days. On 7 February 1979, you were issued your second Page 13 counseling concerning deficiencies in your military behavior and advised again that any further misconduct of a discreditable nature with either civilian or military authorities may be grounds for administrative separation. On 7 March 1979, you received your second conviction by a SCM for a period of UA totaling 56 days. On 9 March 1979, you received your second NJP for UA and failure to obey barracks regulation. Unfortunately, some documents pertinent to your administrative separation are not in your official military personnel file (OMPF).



Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Your record does reflect, on 13 April 1979, you were informed that you were not recommended for reenlistment due to your frequent involvement of a discreditable nature with military authorities. The separation authority subsequently directed your administrative discharge from the Navy with a General (Under Honorable Conditions) character of service. On 13 April 1979, you were discharged from the Navy with a General (Under Honorable Conditions) characterization of service by reason of misconduct due to frequent involvement of a discreditable nature with military authorities.

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 character of service and contentions that your mother passed away during your last two weeks of Boot Camp, you had a hard time trying to deal with the issue, and you rebelled against authority during your time of grief. 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 your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your multiple administrative counselings, two NJPs and two SCMs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded your misconduct showed a complete disregard for military authority and regulations. The Board also considered the likely negative impact your conduct had on the good order and discipline of your command. The Board noted, despite your record of misconduct, you were given opportunities to correct your behavior. Ultimately, the Board found that your misconduct was intentional and made you unsuitable for continued naval service. Finally, the Board noted that you did not provide any evidence to substantiate your contentions. As a result, the Board determined that significant negative aspects of your active service outweighed the positive aspects and continues to warrant a General (Under Honorable Conditions) 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 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

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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.

