



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

█
Docket No: 5701-22
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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 30 September 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).

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 and entered active duty on 2 February 1982. Your pre-enlistment physical examination, on 3 December 1981, and self-reported medical history both noted no neurologic or psychiatric conditions or symptoms. On 15 July 1982, you reported for duty on board the █ in █.

On 23 March 1985, you received non-judicial punishment (NJP) for insubordinate conduct, failing to obey a lawful order, and willfully disobeying a lawful order from a commissioned officer. You did not appeal your NJP.

On 26 March 1985, the suspended portion of your NJP was vacated and enforced due to continuing misconduct. That same day, you received NJP for insubordinate conduct. You did not appeal your second NJP. As part of your punishment, you were placed in the Correctional Custody Unit for thirty days. Further, your command issued you a "Page 13" counseling warning (Page 13) documenting your NJP, and your demonstrated lack of respect for your supervisors. The Page 13 expressly warned you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for an administrative separation. You did not submit a Page 13 rebuttal statement.

On 10 June 1985, you received NJP for disobeying a lawful order from a superior petty officer and unauthorized absence (UA). You did not appeal your third NJP. Later the same day, you commenced a period of UA that terminated after eight days, on 18 June 1985, with your surrender to military authorities.

On 5 September 1985, you were notified of administrative separation proceedings by reason of misconduct due to the commission of a serious offense. You consulted with counsel and waived your rights to submit a statement to the separation authority, and to request an administrative separation board.

In the interim, on 11 September 1985, you received NJP for your eight-day UA and for missing movement. You did not appeal your fourth NJP. On 13 September 1985, your command issued you a Page 13 documenting your disqualification for submarine duty by reason of unreliability. Ultimately, on 15 November 1985, you were discharged from the Navy for misconduct with an other than honorable (OTH) characterization of service and assigned an RE-4 reentry code.

On 26 October 2004, this Board denied your initial petition for relief. On 4 June 2013, your request for reconsideration was denied.

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 for a discharge upgrade and contentions that: (a) you should have received an Honorable discharge for your service, (b) you served honorably for well over ninety percent (90%) of your time in service, and (c) you had a little trouble at the end of your service, but not to the level of an OTH discharge. 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. The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade, change in reentry code, or other conforming changes to your DD Form 214. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that characterization under OTH conditions is generally warranted for misconduct and is appropriate when the basis for separation is the commission of an act or acts

constituting a significant departure from the conduct expected of a Sailor. The Board determined that the record clearly reflected your pattern of misconduct was intentional and willful and indicated you were unfit for further service. Moreover, the Board noted that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions.

The Board also noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge or reentry code to be automatically upgraded after a specified number of months or years. Lastly, absent a material error or injustice, the Board generally will not summarily upgrade a discharge or change a reentry code solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. As a result, the Board determined that there was no impropriety or inequity in your discharge characterization and reentry code, and the Board concluded that your serious misconduct clearly merited your receipt of an OTH, and that such action was in accordance with all Department of the Navy directives and policy at the time of your discharge. Even in light of the Wilkie Memo and reviewing the record holistically, the Board still concluded that insufficient evidence of an error or injustice exists to warrant 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, _____ 10/7/2022

█

Executive Director
Signed by: █