

DEPARTMENT OF THE NAVY

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

> Docket No: 6893-22 Ref: Signature date

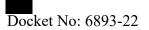


Dear Petitioner:

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 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 5 December 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, 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 May 1969. On 26 January 1970, you received nonjudicial punishment (NJP) for drunk and disorderly conduct. Subsequently, a verification of your service record revealed that you falsified your age with the intent to enlist. On 5 August 1970, you began a period of unauthorized absence (UA) which lasted five-days and resulted in your second NJP on 9 August 1970. On 25 August 1970, you began a second period of UA which lasted two-days and resulted in your third NJP on 26 August 1970. On 6 November 1970, you received a fourth NJP for wrongful appropriation. On 9 November 1970, you were convicted by summary court martial (SCM) for assault, drunk and disorderly conduct, and disobedience of a lawful order. You were sentenced to 35 days in restrictions and forfeiture of pay. As a result, on 12 November 1970, you were notified of the initiation of administrative separation proceedings by reason of due to frequent involvement, at which point, you decided to waive your procedural rights. On 17 November 1970, your commanding officer (CO) recommended an Honorable discharge characterization of service by



reason of unfitness due to frequent involvement. On 1 January 1971, you began a third period of UA which lasted six-days. On 8 January 1971, your CO changed his recommendation in your case to a General (Under Honorable Conditions) discharge characterization by reason of unfitness due to frequent involvement. On 14 January 1971, you were convicted by SCM for the previous period of UA. You were sentenced to reduction to the rank of E-1, confinement at hard labor, and forfeiture of pay. On 1 February 1971, you decided to waive your procedural rights. On 12 February 1971, the separation authority approved and ordered a General (Under Honorable Conditions) discharge characterization by reason of unfitness due to frequent involvement. On 19 February 1971, you were so discharged.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDBR denied your application, on 22 March 1972, after determining your discharge was proper as issued.

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 contention that you were informed that your discharge would automatically upgrade six months following your discharge. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

After thorough 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 and SCMs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact it had on the good order and discipline of your unit. In reviewing your record, the Board noted the multiple chances your command provided you prior to commencing administrative separation processing. Of particular note, the Board considered that you were originally recommended for an Honorable characterization of service before committing additional misconduct that resulted in another SCM. These factors led the Board to conclude you already received a large measure of clemency from the Navy prior to your discharge. Further, contrary to your assertion that you were discharged for an underaged enlistment, the Board concluded you were discharged for extensive misconduct. Finally, the Board 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 significant negative aspects of your active duty 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 an upgraded characterization of service as a matter of clemency or equity. 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 attaches to all official records. Consequently, when

Docket No: 6893-22

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.

