



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

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Docket No. 7343-22
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your late father's U.S. Navy 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 20 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).

Your late father enlisted in the Navy and entered active duty on or about 6 February 1943. His pre-enlistment physical examination did not note any psychiatric or neurologic conditions or symptoms.

On 10 March 1944, your father commenced an unauthorized absence (UA) while he spent time in civilian confinement in █ for car theft. The UA terminated after 101 days, on 19 June 1944, following his release from civilian confinement. The Board noted that time spent in civilian confinement is considered an unauthorized absence on a day-for-day basis.

On 21 June 1944, pursuant to his guilty plea, your father was convicted at a Summary Court-Martial (SCM) of his 101-day UA. He received as punishment extra police duties for thirty (30)

days, forfeitures of pay, and a discharge from the Navy with a Bad Conduct Discharge (BCD). On 22 June 1944, the Convening Authority (CA) approved the SCM sentence as adjudged but remitted the BCD on the condition of Petitioner's satisfactory record for one (1) year. On 2 October 1944, the Chief of Naval Personnel (CNP) further reduced the BCD probationary period to six (6) months. On 6 October 1944, the Secretary of the Navy approved CNP's recommendation.

Unfortunately, your father was charged with violating the terms of his six-month probation. On 20 November 1944, your father received non-judicial punishment ("Captain's Mast") for being UA beyond his authorized liberty, on 2 October 1944, for two hours and thirty minutes. The CA vacated the probation and ordered executed the BCD in accordance with the approved SCM sentence. On 20 November 1944, your father was discharged from the Navy with a BCD.

On 27 February 1951, the Board of Review, Discharges, and Dismissals (BRDD) recommended your father's discharge be upgraded to "General" by reason of the convenience of the government. However, on 19 April 1951, the Assistant Secretary of the Navy for Air (ASN) disapproved the BRDD decision. The ASN specifically noted in his decision:

In view of ██████████ lengthy absence offense and the fact that he pleaded guilty, thereby admitting that the absence was due to his own misconduct, and the additional fact that he failed to meticulously observe all rules of discipline in that he committed another absence offense within 4 months after having been placed on probation, it is felt that his type of discharge is in accordance with the conduct and disciplinary standards of the service. I note that *the offenses were committed during time of war when every man was needed at his duty station.* (emphasis added)

On 17 February 1953, the BRDD requested that the Secretary of the Navy (SECNAV) authorize the BRDD to reopen your father's case for further consideration. The BRDD highlighted to SECNAV that new evidence was brought to the BRDD's attention having sufficient merit to warrant reconsideration.

However, on 13 April 1953, the BRDD denied relief. The BRDD noted in its reconsideration decision that your father committed an offense during the probationary period sufficiently serious in nature to warrant the termination of probation and execution of the prior SCM sentence. The BRDD concluded that the BCD as originally issued was proper, and that no evidence was presented warranting any change when weighed against the reasonable standards of the naval service. On 5 May 1953, the BRDD noted in its letter to CNP that SECNAV reviewed and approved the reconsideration proceedings and denial.

On 31 July 1953, your father sent a letter to the Bureau of Naval Personnel requesting that he be permitted the opportunity to reenlist. He noted in his request that he likely would not have been separated from the service with a BCD had he not been drinking excessively on the dates of his offenses. On 24 August 1953, the Reenlistment Board rejected your father's reenlistment request.

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 father's characterization of service and contentions that: (a) upon review of your father's record there appear to be some inconsistencies, such as your father sitting in a local jail for sixty (60) days without the advice of counsel or the Navy using its influence to have him released during a time of war, (b) the day of his UA underlying his NJP was the same day the Navy reduced your father's probationary period to six (6) months, and it was quite possible that your father was at this hearing instead of being in a UA status, and (c) you are not asking for benefits, but just to simply clear your father's name so he may rest in peace. For purposes of clemency and equity consideration, the Board considered the evidence you submitted in support of your application.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. First, the Board noted that on Monday, 2 October 1944, CNP reduced your father's BCD probationary period to six months. However, the Board determined that any such decision by CNP would have been made and promulgated based on an internal review of the entire record without any personal appearance hearing for your father to attend in Washington, D.C. The Board also noted that the record reflected your father's UA, on 2 October 1944, was related to him not reporting back from liberty in a timely fashion.

The Board unequivocally did not believe that your father's record was otherwise so meritorious to deserve a discharge upgrade. The Board concluded that significant negative aspects of his conduct and/or performance greatly outweighed any positive aspects of his military record. The simple fact remains is that your father was absent from the Navy during the height of World War II while he was contractually obligated to serve, and he remained in a UA status for 101 days without any legal justification or excuse. The Board determined that your father's serious misconduct during a time of war constituted a significant departure from the conduct expected of a Sailor, and that the record clearly reflected your father's misconduct was intentional and willful and demonstrated he was unfit for further service. Moreover, the Board noted that the evidence of record did not demonstrate that your father was not mentally responsible for your conduct or that he should not otherwise be held accountable for his actions.

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 determined that there was no impropriety or inequity in your father's punitive discharge, and the Board concluded that your father's serious misconduct clearly merited his receipt of a BCD. While the Board carefully considered the evidence you submitted in mitigation, even in light of the Wilkie Memo and reviewing the record holistically, the Board still concluded given the totality of the circumstances your request does not merit relief. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

The Board is truly sorry for the unfortunate loss of your father in 1994. 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,

1/31/2023

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Executive Director

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