



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: 7613-22

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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session, considered your application on 28 November 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 this 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 previously applied to the Navy Discharge Review Board for an upgrade to your characterization of service and were denied relief on 2 December 1996. You also previously applied to this Board for relief and were denied on 27 April 2010.

After a brief period of active duty service, you commenced a second period of active duty with the Navy on 1 February 1990. On 3 February 1991, you received non-judicial punishment (NJP) for violating Uniform Code of Military Justice Article 134, for wrongfully using another person's telephone credit card number. You were awarded a reduction in rank to E-2, restriction/extra duties for 25 days, and forfeitures of pay. You did not appeal your NJP.

On 4 August 1993, you were found guilty at Special Court Martial (SPCM) of violating UCMJ Article 121 (larceny), for stealing a shipmate's wallet and using his bank card to extract money from his account. You were sentenced to four months confinement, reduction in rank to E-1, and forfeiture of pay.

On 18 January 1994, you were notified that you were being processed for an administrative discharge by reason of misconduct, commission of a serious offense. You elected your right to consult with qualified counsel and your right to present your case at an administrative separation board. On 20 January 1994, the administrative separation board convened and, by a vote of 3 to 0, found that you committed misconduct and recommended your separation with an Other than Honorable (OTH) characterization of service. On 25 March 1994, you were discharged from the Navy for "Misconduct" with an OTH characterization of service and assigned an RE- 4 reentry code.

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 change your discharge characterization and narrative reason for separation. For purposes of clemency consideration, the Board noted that you provided advocacy letters and documentation of post-service accomplishments.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it involved a court martial conviction. The Board also considered the likely negative impact your conduct had on the good order and discipline of your command. The Board determined that characterization under OTH conditions 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 service member. Larceny, especially when it involves the property of a fellow shipmate, is not only a significant departure from expected behavior but it is a blatant violation of trust. As a result, the Board determined that there was no impropriety or inequity in your discharge and concluded that your misconduct clearly merited your receipt of an OTH. The Board highlighted that your misconduct could have resulted in a punitive discharge, rather than the administrative discharge that was issued in your case.

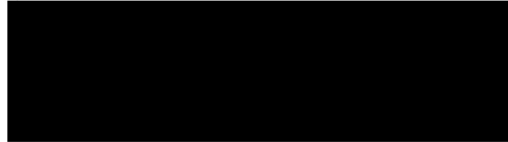
The Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. The Board also did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. Lastly, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. While the Board commends your post-discharge accomplishments and good character, 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 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,

12/15/2022



Executive Director

Signed by: █