



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: 8044-22

Ref: Signature date

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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 14 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 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 29 May 1980. On 13 April 1984, you were convicted by special court martial (SPCM) for wrongful appropriation of a █ Sport Boat valued █ a █ Motor valued █ and a █ loader trailer valued █, property of a commissioned officer. You were sentenced to reduction to the rank of E-1, confinement at hard labor, and forfeiture of pay. On 18 July 1984, you began a period of unauthorized absence (UA) which lasted 36 days and resulted in you missing ship movement. On 25 October 1984, you were convicted by summary court martial (SCM) for a period of UA and missing ship movement. You were sentenced to reduction to the rank of E-1, confinement at hard labor, and forfeiture of pay.

On 31 October 1984, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to pattern of misconduct and misconduct due to commission of a serious offense. On 1 November 1984, you decided to waive your procedural rights. On

2 November 1984, your commanding officer recommended an Other Than Honorable (OTH) discharge characterization of service by reason of misconduct due to pattern of misconduct. On 7 November 1984, the separation authority approved the recommendation and your discharge. On 11 January 1985, you were discharged with an OTH.

On 18 July 2017, this Board denied your request for a discharge characterization upgrade.

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 you have already paid your debt to the Navy, that you are not the same person you were 37 years ago, and that your misconduct was not severe enough to deserve an OTH 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 SPCM and SCM, 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. The Board determined you were fortunate that did not receive a punitive discharge as a result of your SPCM conviction based on the seriousness of your misconduct and concluded you already received a large measure of clemency when the Navy allowed you to continue your Navy career. Additionally, the Board also 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 your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH 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 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,

12/16/2022

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Executive Director
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