



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

█  
Docket No. 8329-22  
Ref: Signature Date

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Dear █

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 6 March 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).

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 began a period of active duty on 30 May 1980. On 8 May 1981, you received your first of five nonjudicial punishments (NJPs) for willfully damaging government property. This was followed by two additional NJPs for provoking speeches or gestures, insubordinate conduct, and disrespect. Subsequent to your third NJP, you were counseled regarding the aforementioned infractions and notified that you were being retained in the naval service yet advising you that one more infraction of the UCMJ (uniform code of military justice), or involvement of a discreditable nature with military authorities may result in your recommendation for administrative discharge. On 9 September 1982, you received a fourth

NJP for sleeping on post followed by your fifth and final NJP held on 12 November 1982, for sleeping on watch and disorderly conduct.

On 25 January 1983, you were notified of your pending administrative discharge by reason of commission of a serious offense (COSO), at which time you waived your right to consult with military counsel and to have your case heard before an administrative discharge board. On 26 January 1983, your commanding officer (CO) recommended you be discharged with an Other Than Honorable (OTH) characterization of service by reason of COSO. On 1 February 1983, the separation authority directed you be discharged with an OTH by COSO. Further, on 11 February 1983, you signed administrative remarks acknowledging your character and type of discharge as well as your non-recommendation for reenlistment. On 11 February 1983, you were so discharged.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. On 21 November 1983, the NDRB denied your application 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 to upgrade your characterization of service and your contentions that: (1) you incurred multiple physical injuries during service that you would like treated, (2) you were told if you were to accept a discharge it would be General (Under Honorable Conditions), (3) you were not allowed to testify or present evidence at a hearing in 1984, (4) the documents you provided to NDRB were never returned to you, (5) had you "known the facts" you would have completed your four years and asked for a transfer to another command, and (6) multiple members of your chain of command harassed you. For purposes of clemency and equity consideration, the Board noted you did not provide 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, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Further, the Board considered the negative effect your conduct likely had on the good order and discipline of your command. Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits. Finally, the Board noted you provided no evidence to substantiate your contentions. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member 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 granting you the relief you requested or granting relief 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,

3/22/2023

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Executive Director

Signed by: █