



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

█  
Docket No. 9162-22  
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 15 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).

You enlisted in the U.S. Navy and commenced active duty on 16 July 1965. On 15 November 1965, you received non-judicial punishment (NJP) for failure to go to your appointed place of duty. You received your second NJP, on 12 February 1966, for disrespect in language towards a superior petty officer and direct disobedience of a lawful order. Then, on 7 November 1966, you began a period of unauthorized absence (UA) and missed ship's movement. You were eventually apprehended on 23 January 1967 and you pleaded guilty to Joyriding, on 6 February 1967, in the Municipal Court of █. On 1 March 1967, you were found guilty at special court-martial (SPCM) for 91 days UA. As a result, the Commanding Officer (CO) notified you for administrative separation for your civilian conviction. You elected your right to consult with counsel and to have your case heard by an administrative separation board (ADB). The ADB recommended retention and the Separation Authority (SA) elected not to separate you.

However, on 21 May 1967, you started another period of UA which ended when you were arrested for a traffic violation. At the time of your arrest, you were found with needle marks and a hypodermic outfit. Eventually, you were found guilty at your second SPCM for 214 days UA and you were awarded a Bad Conduct Discharge (BCD). While your conviction was under going review, you had another period of UA from 23 May 1968 until 27 July 1968, which ended with your apprehension. Subsequently, you had a third NJP for the period of UA. After your BCD was affirmed, you were so discharge on 16 September 1968.

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 were young, foolish and disillusioned at the time, you foolishly protested the war, you regret that decision, and request clemency. For purposes of clemency and equity consideration, the Board noted you provided a personal statement and three character statements.

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 three NJPs and two SPCM convictions, 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 likely discrediting effect your civil conviction had on the Navy. Finally, the Board noted that you continued to commit misconduct even after your second SPCM conviction; misconduct for which you were not punished. This led the Board to conclude you already received a large measure of clemency from the Navy. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Sailor and continues to warrant 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 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. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. 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,

3/23/2023

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Executive Director

Signed by: █