



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

█
Docket No. 77-23
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.

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 reconsideration application on 9 June 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 originally enlisted in the U.S. Navy and entered active duty on 4 August 1995. Your enlistment physical examination, on 31 January 1995, and self-reported medical history both noted no neurologic or psychiatric conditions or symptoms.

On 15 November 1995, you underwent a psychiatric evaluation at █. The Medical Officer (MO) diagnosed you with an antisocial personality disorder, severe. The MO determined that you were a continuing danger to yourself and others if expeditious administrative separation processing did not occur.

However, on 21 December 1995, you commenced a period of unauthorized absence (UA), and your command declared you to be a deserter on 21 January 1996. Your UA terminated after forty-three (43) days with your arrest by civilian authorities in █. On 11 March 1996, you received non-judicial punishment (NJP) for your 43-day UA and for

making and uttering fifty-one (51) bad checks to the ██████████ over a twenty-five (25) day period. You did not appeal your NJP.

On 20 March 1996, you were notified of administrative separation proceedings by reason of misconduct due to the commission of a serious offense, and also for the convenience of the government due to your personality disorder. You waived your rights to consult with counsel, but elected your right to a hearing before an administrative separation board (Adsep Board).

In the interim, you received NJP for larceny from the ██████████. You did not appeal your second NJP. On 22 April 1996, your separation physical examination and self-reported medical history both noted no neurologic or psychiatric conditions or symptoms.

On 6 May 1996, an Adsep Board convened in your case. At the Adsep Board you were represented by a Navy Judge Advocate and you testified under oath. Following the presentation of evidence and witness testimony, the Adsep Board members unanimously determined that the preponderance of the evidence presented proved you committed a serious offense. Subsequent to the misconduct finding, the Adsep Board members recommended that you be separated with an under Other Than Honorable conditions (OTH) characterization of service. Ultimately, on 20 June 1996, you were separated from the Navy for misconduct with an OTH discharge characterization 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 for a discharge upgrade and your sole contention that you are requesting a discharge because you wish to apply for VA medical benefits. 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. The Board did not believe that your record was otherwise so meritorious to deserve an upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your brief military record. The Board determined that the record clearly reflected your misconduct was intentional and willful and indicated you were unfit for further service. Moreover, the Board noted that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions.

Additionally, absent a material error or injustice, the Board declined to summarily grant your request solely for the purpose of facilitating retirement benefits, veterans' benefits, or enhancing educational or employment opportunities. The simple fact remained is that you left the Navy while you were still contractually obligated to serve and you went into a UA status for over six full weeks without any legal justification or excuse. As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your misconduct and disregard for good order in discipline clearly merited your OTH discharge. 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 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,

6/12/2023



Executive Director

Signed by: █