



**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. 302-23  
Ref: Signature Date

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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 application on 27 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 entered active duty with the Navy on 3 September 1974. During the period from 14 March 1975 and 30 May 1975, you received two non-judicial punishments (NJP) for unauthorized absences (UA) for three hours and a half and failure to obey a lawful order. During the period from 10 September 1975 and 7 November 1975, you received three NJPs for five specifications of UA totaling one day, three hours and 15 minutes, absence from appointed place of duty, and failure to go to appointed place of duty. Subsequently, you were notified of pending administrative separation action by reason of unfitness due to frequent involvement with military authorities. After you waived your rights, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge with a General (Under Honorable Conditions) (GEN) characterization of service. The SA approved the CO's recommendation and directed a GEN characterization of service by reason of unfitness due to frequent involvement with military authorities. On 22 December 1975, you were so discharged.

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 discharge and contentions that 58 years has passed, you paid for your mistakes and you need Department of Veterans Affairs (DVA) benefits to improve your life style. For the purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

The Board noted that you indicated, on your application, that your misconduct could be attributed to Post-Traumatic Stress Disorder or an other mental health condition. The Board also noted that, after you were contacted regarding evidence in support of your claims, you informed the Board to proceed with your application without consideration of your mental health issues.

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 five NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact your conduct had on the good order and discipline of your command. Further, the Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows a discharge to be upgraded due solely to the passage of time or after a specified number of months or years. Additionally, 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. Finally, the Board determined, based on your extensive record of misconduct, that you were fortunate to receive a GEN characterization rather than an Other Than Honorable characterization. The Board noted that your frequency of misconduct qualified for a punitive discharge under the Uniform Code of Military Justice. As a result, the Board concluded significant negative aspects of your active service outweigh the positives and continues to warrant a GEN characterization of service. 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 clemency in the form of an upgraded characterization of service. 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,

4/11/2023

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Executive Director  
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