



**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. 0558-23  
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 application on 1 February 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 Navy and began a period of active duty on 10 January 1980. On 12 February 1980, you received non-judicial punishment (NJP) for unauthorized absence (UA), wrongful appropriation, and forgery. The record shows, on 16 November 1980, you commenced a period of UA that concluded upon your surrender on 4 December 1980, totaling 17 days. On 9 January 1981, you received a second NJP for wrongful use of marijuana. On 2 September 1981, you were evaluated and diagnosed with character disorder, passive aggressive type. On 3 September 1981, you received a third NJP for absence from your appointed place of duty and breaking restriction. On 14 October 1981, you received a fourth NJP for UA totaling 55 days and missing movement. On 16 October 1981, you were issued an administrative remarks counseling advising you that if there were no improvement in your conduct you would be subject to being administratively separated from the naval service. On 4 February 1982, you received a fifth NJP for failure to obey a lawful order from a superior noncommissioned officer. The record shows, on 31 March 1982, you commenced a period of UA that concluded upon your apprehension by

military authorities on 9 June 1982, totaling 69 days. On 9 June 1982, you were convicted by a special court-martial (SPCM) of four specifications of UA totaling six days, missing movement, and escaping lawful custody. As punishment, you were sentenced to confinement, forfeiture of pay, reduction in rank, and a Bad Conduct Discharge (BCD). The BCD was subsequently approved at all levels of review and, on 16 February 1984, 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 change your discharge character of service and contentions that your command committed an injustice by not allowing you and your lawyer to be present at the time of your court-martial, your command allowed the court-martial to be held as retaliation for your absence, your command was fully aware that you were in rout via an escort by the Marshals, and you were UA at the time because of family issues. 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 your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct as evidenced by your five NJPs and SPCM conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded that it showed a complete disregard of military authority and regulations. The Board also considered the negative impact your conduct likely had on the good order and discipline of your command. Further, the Board noted you provided no evidence to substantiate your contentions. Additionally, the Board found that the record clearly reflected that your active duty misconduct was intentional and willful. The Board also determined that the evidence of record did not demonstrate that you were not responsible for your conduct or that you should otherwise not be held accountable for your actions. Ultimately, the Board concluded that the discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service, which was terminated by your BCD. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant a BCD. 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 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, \_\_\_\_\_

2/26/2023

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Executive Director

Signed by: █