



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. 676-23
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 17 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 to 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 the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Navy and began a period of active duty on 15 January 1971. You served for 2 years without incident until you received nonjudicial punishment (NJP), on 19 January 1973, for a violation of Article 86 due to a minor unauthorized absence (UA). Your second and third NJPs followed in quick succession on 1 June 1973 and 17 July 1973, for two violations of Article 91 due to disobeying a lawful order and disrespect toward a superior petty officer and for an Article 86 UA period 1 hour and 50 minutes, respectively. On 3 August 1973, you were arrested by civilian authorities following a search warrant of your residence which discovered that you were in possession of marijuana and narcotic paraphernalia. In response to the report of your arrest, your command was directed by Chief of Naval Personnel to investigate your arrest

and, if you were found guilty, to process you for administrative separation. While your civil offenses were pending, you received a fourth NJP for violations of Article 91 due to disrespect of a superior petty officer and Article 113 for loitering on watch. Meanwhile, on 8 October 1973, you were found guilty of both civilian charges pursuant to a plea of nol pros and subsequently notified of administrative discharge processing by reason of civil conviction and frequent involvement of a discreditable nature with military authorities. Your notification included a statement of awareness regarding the potential for a discharge under Other Than Honorable (OTH) conditions, and you requested a hearing before an administrative separation board with representation by legal counsel and the right to submit a statement. Prior to the convening of your administrative hearing, however, you received a fifth NJP for two additional periods of UA, which resulted in your decision to submit a conditional waiver of your hearing and accept a General (Under Honorable Conditions).

Your commanding officer's recommendation for your GEN discharge was forwarded on 13 December 1973 wherein he described that you had a "total disregard for those placed in authority over" you. The same day that CNP approved your discharge, you were subject to a sixth NJP for two additional periods of UA. In an administrative counseling entry, dated 7 February 1974, you requested to be discharged in accordance with the message from CNP. Although you received a seventh NJP on 15 February 1974 for four additional periods of UA as well as a violation of Article 90 for willful disobedience of a superior commissioned officer, your command elected to proceed with your approved separation, and you were discharged with a GEN on 22 February 1974.

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 to "Honorable" and your contentions that you loved being in the Navy but struggled with harassment and lack of training or promotion opportunity. 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 these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs and civil conviction, 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. Additionally, regarding your contention about your loss of paygrades, the Board noted that you had attained the pay grade of E-3 within your first two years of service and your command issued minimal punishment for the majority of your NJP offenses. In fact, you were not reduced in rank from E-3 to E-2 until your sixth NJP for your ninth and tenth offenses against the Uniform Code of Military Justice (UCMJ), even after having already been found guilty of civil offenses involving illegal drugs. Therefore, the Board concluded you already received a large measure of clemency from the Navy based on their leniency in imposing NJP and the granting of your GEN discharge despite a civil drug conviction and seven NJPs. 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 is attached 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,

3/3/2023

