



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. 841-23
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 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 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 15 September 1964. After several reenlistments and despite being retirement eligible at such time, you again reenlisted on 24 March 1986.

During your last enlistment you received an adverse performance evaluation for the period ending 28 June 1985. A portion of the comments read as follows:

The purpose of this evaluation is to document █ serious professional shortcomings as a First Class Disbursing Clerk. As Deputy Disbursing Officer, █ lack of sound judgment and unacceptable professional standards of conduct have rendered him unreliable for his position. A recent audit report revealed █ was unable to maintain the

requisite professional integrity that his appointment demands. Abusing his authority to his personal advantage, ██████████ actions leave considerable doubt concerning his ability to properly execute the duties as a Disbursing Clerk. His appointment as Deputy Disbursing Officer has been revoked.

On 17 June 1986, you commenced an unauthorized absence (UA) from the ██████████ ██████████. Your command declared you to be a deserter the same day in view of your embezzlement of more than \$9,000 of currency from the ██████████ Disbursing Office. Your UA terminated, after nine days, with your surrender to military authorities at the American Embassy in ██████████ on 27 June 1986.

On 27 October 1986, you were convicted at a General Court-Martial (GCM) of your UA and financial crimes. You were sentenced to confinement, a reduction in rank to the lowest enlisted paygrade (E-1), and a discharge from the Navy with a Bad Conduct Discharge (BCD). On 10 December 1986, the Convening Authority approved the GCM sentence. On or about 29 June 1987, you were released from confinement. Upon the completion of GCM appellate review in your case, on 8 February 1988, you were discharged from the Navy with a BCD 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 contentions that: (a) you had eleven (11) years of excellent service from March 1966 through May 1977, (b) your family is homeless and you need to a discharge upgrade to get the benefits you earned during your first time served, (c) you are 76 years old and your wife is 73, (d) your daughter is 50 years old and disabled, and your granddaughter is 29 and disabled, (e) you are a member of the American Legion and were a Post Commander in 1989, and (f) the Department of Veterans Affairs in ██████████ needs your upgrade in order to get the help your family needs. 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. 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 military record. The Board also determined that your misconduct constituted a significant departure from the conduct expected of a senior Petty Officer, and that the record clearly reflected your misconduct was intentional and willful and demonstrated you were unfit for further service. Moreover, the Board noted 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.

Absent a material error or injustice, the Board declined to summarily upgrade a punitive discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or

employment opportunities. The Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. The Board also noted that, although it cannot set aside a conviction, it might grant clemency in the form of changing a characterization of discharge, even one awarded by a court-martial. However, the Board concluded that despite your contentions this was not a case warranting any clemency as you were properly convicted at a GCM of serious misconduct. Accordingly, the Board determined that there was no impropriety or inequity in your discharge, and concluded that your misconduct and disregard for good order and discipline clearly merited your BCD. While the Board empathizes with your current situation, 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, _____
2/27/2023

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Executive Director
Signed by: █