



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. 1025-23
Ref: Signature Date

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Dear █

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 you did not file your application in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider the 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).

You enlisted in the Navy and began a period of active duty on 19 November 1995. You absented yourself without leave on three occasions from 10 - 11 August 1996, 13 - 15 August 1996, and 21 August 1996 - 10 September 1996, although your Certificate of Release or Discharge from Active Duty only documented two of your three periods of lost time. On 11 July 1997, you were convicted by General Court-martial (GCM) for violations of the Uniform Code of Military Justice (UCMJ) under Articles 86, for unauthorized absence (UA), and for Article 112a due to wrongful use of a controlled substance. Your adjudged sentence included confinement, automatic forfeitures and reduction in grade, and a Dishonorable Discharge (DD). You were eventually discharged with a DD on 8 December 1998.

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, your belief that your service dates are erroneous, and your contentions that your post-discharge character merits relief on the basis of clemency balanced against your youth and immaturity, which you indicated

caused you to feel that you were being treated unfairly due to unfair denial of your leave requests and led to your periods of UA. You also contend that you were discharged in absentia after a 19 day absence. For purposes of clemency and equity consideration, the Board noted provided 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 GCM, 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. With respect to your belief that your service dates are erroneous, the Board found that the adjusted dates were intended to account for your lost time in accordance with regulation and, therefore, not erroneous or unjust. 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. Although the Board favorably observed that you submitted several letters of recommendation from your business associates complimenting your performance and character, as well as documentation of your continued employment successes, the Board concluded that the potentially mitigating factors you submitted for consideration are insufficient to outweigh your presumptively serious misconduct evidenced not only by your GCM conviction for serious offenses but also by the weighty and considered punishment of a DD. Therefore, 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,

3/11/2023

[REDACTED]

Executive Director

Signed by: [REDACTED]