



**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. 1078-23  
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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 17 April 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, 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 16 May 1988. On 20 October 1988, you received nonjudicial punishment (NJP) for disobeying a lawful order, and for wrongfully behaving in a disrespectful manner towards another seaman recruit. On 19 July 1989, you received a second NJP for being incapacitated for duty, failure to obey a lawful order and unauthorized absence (UA) from appointed place of duty. On 21 July 1989, you began a second period of UA which lasted four-days and resulted in NJP on 26 July 1989. On the same date, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to pattern of misconduct and commission of a serious offense. Subsequently, you decided to waive your procedural rights. On 11 August 1989, your commanding officer recommended an Other Than Honorable (OTH) discharge characterization of service by reason of misconduct due to pattern of misconduct and commission of a serious offense. On 21 August 1989, the separation authority approved and ordered an OTH discharge characterization by reason of misconduct due to pattern of misconduct. On 26 August 1989, 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 for a discharge upgrade and contentions that you were not correctly represented and not given the opportunity to make corrections to your mistakes due to racial prejudice. 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, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact it had on the good order and discipline of your unit. Contrary to your assertion of unfair treatment due to racial prejudice, the Board noted your first NJP occurred in October 1988 and you continued to commit further misconduct that resulted in your eventual discharge in August 1988. The Board also noted that you went UA two days after NJP was imposed on you for the second time. The Board also took into consideration the comments of your commanding officer that stated, “[He] has absolutely no potential for further service. His total lack of reliability adversely affects the performance of his shipmates. [His] history of violating the Uniform Code of Military Justice demonstrates his malicious disregard for rules and regulations. He has continually attempts to intimidate his immediate seniors and peers. He has been responsible for a significant decline in his division’s morale and this effect has extended beyond his division and department. He has been counseled repeatedly by all echelons of the chain of command (including me personally) to conform his behavior to Navy standards.” Based on these factors, the Board concluded you were given ample opportunity to correct your deficiencies and your command had no option but to discharge you due to your conduct and its negative effect on the command’s mission. Finally, the Board noted you provided no evidence to substantiate your contentions. 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 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, \_\_\_\_\_

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Executive Director

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