



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. 1371-23
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 13 March 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).

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You entered active duty with the Navy on 14 February 1957. On 8 August 1957, a summary court-martial (SCM) convicted you failure to go to appointed place of duty, disobeying a lawful order, and wrongful possession of another's military identification card. On 28 October 1957, a SCM convicted you of disobeying a lawful order and failure to obey a lawful order. On 3 June 1958, civil authorities convicted you of reckless driving and driving without a license, sentenced you to a fine of \$█, and suspended you driver's license for six months. On 21 August 1958, civil authorities arrested and convicted you of grand larceny of a motorcycle. You were sentenced to confinement for six months and a \$█ fine.

Subsequently, you were notified of pending administrative separation action by reason of civil conviction. After you waived your rights, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge by reason of misconduct due to civil conviction with an Other Than Honorable (OTH) characterization of service. The SA approved the CO's recommendation and, on 5 January 1959, 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 upgrade your discharge and contentions that your punishment was too harsh, you received a pardon from the State of ██████████ and your misconduct was due to alcoholism. In addition, you contended you have been a member of alcoholics anonymous for over 45 years, a proud grandfather, and owned a successful business for 53 years. For purposes of clemency and equity consideration, the Board noted you provided an advocacy letter and a personal statement, but failed to provide supporting documentation describing post-service accomplishments.

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 SCMs and civil convictions, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the discrediting nature of your misconduct to the Navy. Further, the Board considered the likely negative effect your conduct had on the good order and discipline of your command. The Board also noted that the decision by the State of ██████████ to pardon you does not impact your Naval record. Finally, the Board was not persuaded by your argument that you assigned characterization of service was too harsh based on your record of misconduct that was accumulated in approximately 18 months. 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. While the Board commends your post-discharge good character and sobriety, 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. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. 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,

3/25/2023

[REDACTED]

Executive Director

[REDACTED]