



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. 1414-23
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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 6 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 this 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 enlisted in the United States Navy and commenced a period of active duty on 18 November 1996. On your enlistment application you acknowledged pre-service misconduct, to include burglary, possessing burglary tools, violation of probation, shoplifting, curfew violation, and marijuana use. You also previously received an Entry Level Separation (ELS) from the Navy for failure to graduate high school.

On 18 July 1997, you received non-judicial punishment (NJP) for violating Uniform Code of Military Justice Article 86, for failure to go from your appointed place of duty, sea and anchor detail, without being properly relieved, and Article 92, for failure to obey a lawful order by wrongfully possessing drug paraphernalia. You did not appeal this NJP.

On 18 August 1997, you were notified that you were being processed for an administrative discharge by reason of misconduct due to commission of a serious offense. After consulting with qualified counsel, you waived your right to present your case at an administrative separation board. In the meantime, on 21 August 1997, you were found guilty at Summary Court Martial (SCM) of violating UCMJ Article 86, for failure to go to restricted muster on nine occasions. You were

awarded 5 days confinement and forfeitures of pay. Prior to your discharge, in September 1997 you had two additional periods of unauthorized absence (UA), for a total of five days. Ultimately, on 14 November 1997, you were discharged from the Navy for misconduct with an Other than Honorable (OTH) characterization of service and assigned an RE-4 reenlistment 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: (1) your desire to change your discharge characterization, (2) your contention that you were falsely accused and arrested, and (3) your assertion that you were scared into signing your discharge paperwork after being admonished by a Judge Advocate. For purposes of clemency and equity consideration, the Board noted that you did not provide advocacy letters or documentation of post-service accomplishments.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP and your SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it involved multiple periods of UA. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command. The Board determined that such misconduct is contrary to the Navy core values and policy, renders such Sailor unfit for duty, and poses an unnecessary risk to the safety of fellow shipmates. The Board noted that you explained why you possessed the tobacco pipe, but did not address your pattern of misconduct related to your unauthorized absences. The Board also considered your argument that you felt pressured to waive your rights. However, the Board felt that, as evidenced by your own statement, that you received advice from qualified counsel with whom you disclosed the facts and circumstances of your case, and despite being told it was “winnable,” you still chose to waive your right to an administrative separation board. The Board determined that characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a service member, and continues to be the appropriate characterization in your case.

Finally, 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. 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 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, _____

3/11/2023



Executive Director

