



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. 1883-23
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 father's 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 September 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 entered active duty with the Navy on 15 March 1960. On 2 August 1960 and 16 August 1960, you received non-judicial punishments (NJP) for unauthorized absence (UA) totaling 2 hours and 30 minutes and failure to obey a lawful order. On 16 June 1961, a summary court-martial (SCM) convicted you of UA totaling three days. On 19 March 1962, a special court-martial (SPCM) convicted you of two specifications of UA totaling 13 days and 12 hours, missing ship's movement, and breaking restriction. On 2 April 1962, you received a neuropsychiatric evaluation, which diagnosed you with emotional instability reaction and recommended you for separation. Subsequently, you were notified of pending administrative separation action by reason of unfitness due to frequent involvement with military authorities. After you waived your rights, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge with a General (Under Honorable Conditions) (GEN) characterization of service. The SA approved the CO's recommendation and directed a GEN characterization of service by reason of unfitness due to frequent involvement with military authorities. However, on 9 August 1962, a SPCM convicted you of three specifications of UA totaling 38 days. You were sentenced to confinement for six months,

forfeiture of pay, reduction to E-1, and a Bad Conduct Discharge (BCD). After the BCD was approved at all levels of review, on 19 December 1962, you were so discharged.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. On 4 April 1972, the NDRB denied your request after determining that your discharge was proper as issued.

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 you were young, immature, never adjusted to serving in the Navy, and your discharge should be upgraded because you were originally granted a GEN discharge. You also checked the "Other Mental Health" boxes on your application. However, you did not respond to the 9 March 2023 letter from the Board requesting supporting evidence for your mental health claim. 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, SCM and SPCM convictions, outweighed the mitigating evidence in your case. In making this finding, the Board considered the seriousness of your misconduct and determined that it showed a complete disregard for military authority and regulations. Further, the Board noted that the evidence of record did not show that you were not responsible for your conduct or that you should not be held accountable for your actions. The Board also felt that your record clearly reflected your willful misconduct and demonstrated you were unfit for further service. Finally, the Board noted that after receiving an approved GEN discharge, you continued your misconduct by going UA. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Sailor and continues to warrant a BCD. 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,

9/25/2023

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