



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

■
Docket No. 2549-23
Ref: Signature Date



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 11 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, 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).

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Navy and began a period of active duty on 13 April 1987. On 22 October 1987, you were found guilty by a Summary Court-Martial (SCM) for unauthorized absence (UA), orders violation, and false official statement. On 11 February 1988, you received nonjudicial punishment (NJP) for larceny of a jacket valued at \$100.00. On the same date, you were counseled for larceny and advised that failure to take corrective action could result in administrative separation. On 24 March 1988, you began a period of UA lasting 13 days and resulted in NJP on 6 April 1988. On the same date, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to pattern of misconduct and misconduct due to commission of a serious offense. Subsequently, you decided to waive your

procedural rights. On 8 April 1988, your commanding officer recommended an Other Than Honorable (OTH) discharge characterization of service by reason of misconduct and misconduct due to commission of a serious offense. On 13 April 1988, the separation authority authorized and ordered an OTH discharge characterization by reason of misconduct due to pattern of misconduct. On 29 April 1988, 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 experienced prejudice, racism, discrimination, and unfair treatment. The Board noted you checked the "PTSD" box on your application but chose not to respond to the Board's letter of 8 February 2023 requesting supporting evidence for your 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 and SCM, 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. Further, the Board considered the likely negative effect your conduct had on the good order and discipline of your unit. Finally, the Board noted you provided no evidence to substantiate your contentions that you were treated unfairly or that mitigating circumstances existed with your misconduct. Rather, the Board noted you were retained in the service after your SCM and first NJP but you continued to commit misconduct that resulted in your administrative separation. 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,

9/25/2023

