



**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. 2597-23  
Ref: Signature Date



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 19 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, 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 U.S. Navy and entered active duty on 12 May 1975. Upon entry onto active duty, you admitted to illegal use of a controlled substance while in the Delayed Entry Program and you were granted a waiver. You were also granted a waiver for your preservice arrest for arson.

On 13 January 1976, you received non-judicial punishment (NJP) for 20 days unauthorized absence (UA) and missing ship's movement. On 29 January 1976, you received your second NJP for willfully disobey a lawful order. You were subsequently issued a counseling warning for your frequent involvement of discreditable nature with civil and or military authorities.

On 3 February 1976, you received your third NJP for failure to go to appointed place of duty. On 16 February 1976, you received your fourth NJP for willfully damaging government property. On 3 February 1977, you were found guilty at summary court-martial (SCM) for 23 days, 8 days and 62 days UA.

On 10 July 1978, you were found guilty at special court-martial (SPCM) for 66 days and 397 days UA. As part of your sentence, you were awarded a Bad Conduct discharge (BCD). On 14 March 1979, the Navy and Marine Corps Court of Military Review (NCMR) affirmed the findings in your case but set aside your sentence. On 9 April 1979, in accordance with the mandate of the Judge Advocate General (JAG), a rehearing was determined to be impracticable and a sentence of no punishment was approved. You were subsequently ordered discharged by type warranted by your service record. You were so discharged, on 15 June 1979, with a General (Under Honorable Conditions) (GEN) discharge.

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 suffered from 44 years of regret due to your failure to comply and live up to your service obligations and you retired from a civil service career of 35 years after becoming a licensed fireman in the process. For purposes of clemency and equity consideration, the Board noted you provided supporting documentation describing post-service accomplishments but no 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 four NJPs, SCM and SPCM conviction, 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 concluded that you already received a large measure of mitigation of your misconduct when your SPCM sentence, that included a punitive discharge, was set aside upon appellate review. As a result, the Board concluded significant negative aspects of your service outweigh the positive aspects and continues to warrant a GEN characterization. While the Board commends your post-discharge accomplishments and carefully considered the evidence you submitted in mitigation, 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 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,

4/25/2023

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Deputy Director

Signed by: █