



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. 2818-23

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 8 May 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 10 April 1979. On 17 September 1979, you began a period of unauthorized absence (UA) which lasted 11 days. On 29 November 1979, you received nonjudicial punishment (NJP) for two instances of failure to report to your prescribed place of duty. On 24 January 1980, you received a second NJP for failure to report to your prescribed place of duty. On 11 March 1980, you began a second period of UA which lasted one-day and resulted in your apprehension by military authorities. On 20 March 1980, you received a third NJP for failure to report to your prescribed place of duty, two instances of being absent from your appointed place of duty, and an additional charge of UA.

On 29 May 1980, a medical board diagnosed you with Asthma, a physical disability which was neither incurred in nor aggravated by a period of active duty service. On 24 June 1980, you were discharged with a General (Under Honorable Conditions) discharge characterization of service by reason of a physical disability (ETPE) established by a Medical Board.

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: (a) you began coughing and could not breathe well as a result of removing paint from a hull, (b) you feel that your discharge was meant to eliminate a potential future problem, and (c) you have been healthy and without any issues since your discharge from service. 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, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact it had on the good order and discipline of your unit. Finally, the Board noted that your behavior trait average did not meet the minimum average to qualify for a fully Honorable characterization of service. As a result, the Board concluded significant negative aspects of your service outweighed the positive aspects and continues to warrant a General (Under Honorable Conditions) characterization. Even in light of the Wilkie Memo and reviewing the record liberally and 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,

5/28/2023

