



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. 3306-23
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 1 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).

You enlisted in the Navy and commenced active duty on 4 February 2002. On 3 October 2002, you received nonjudicial punishment (NJP) for three instances of larceny. On 20 November 2002, you received a second NJP for disobeying a lawful order. On the same date, the previously suspended punishment from your first NJP was vacated due to your misconduct.

On 20 August 2003, you were convicted by summary court martial (SCM) for two periods of unauthorized absence (UA). You were sentenced to confinement for seven days, and forfeiture of pay in the amount of \$860.00 for one month. On 21 November 2003, you began another period of UA which lasted six days.

On 27 February 2004, you were convicted by special court martial (SPCM) for four periods of UA, escaping from custody, and two instances of wrongful use of a controlled substance. You were sentenced to a Bad Conduct Discharge (BCD), reduction to the inferior grade of E-1,

confinement for five months, and forfeiture of pay in the amount of \$795.00 for five months. After your discharge was approved on all levels, on 22 February 2005, you were discharged with a BCD characterization of service by reason of conviction by SPCM.

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 your period of UA was under 180 days. 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, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included two drug offenses. The Board determined that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. Further, the fact your periods of UA were less than 180 days was not persuasive evidence to the Board that you deserve an upgrade to your characterization of service. The Board noted you were given multiple opportunities to correct your behavior but continued to commit misconduct. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant a BCD 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,

5/26/2023

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