



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

■  
Docket No. 3425-23  
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 24 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, 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).

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues 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 29 April 1981. On 9 January 1982, you received non-judicial punishment (NJP) for wrongful possession of marijuana. On 17 August 1982, you were convicted by a summary court-martial (SCM) of three specifications of unauthorized absence (UA), totaling 24 days, and drunk and disorderly conduct.

On 6 January 1983, you were convicted by a special court-martial (SPCM) of five specifications of UA totaling 50 days, missing ship's movement, failure to obey a general regulation and dereliction in the performance of duty. As punishment, you were sentenced to confinement,

forfeiture of pay, and a Bad Conduct Discharge (BCD). The convening authority approved the sentence adjudged, however, noted that the execution of that portion of your sentence adjudging a BCD and confinement in excess of 75 days shall be suspended for a period of 12 months, unless sooner vacated. On 20 October 1983, you received a second NJP for UA a period totaling 69 days. Based on your continuing misconduct, the commanding officer recommended that the suspended portion of the sentenced adjudged at your SPCM of 6 January 1983 be vacated. On 10 November 1983, you received a third NJP for UA from restricted men's muster on six occasions. On 20 June 1985, the U.S. Court of Military Review affirmed your conviction and sentence. On 21 March 1986, you were discharged from the Navy with a BCD characterization of service.

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 change your discharge character of service and contentions that: (1) you were young and very immature at the time of your UA and did not see the harm you were doing to yourself or the military, (2) you spent two to three years in the Navy most of which was very honorable and distinguished, and (3) once you got into drugs you made some very bad choices, (4) you have distinguished yourself as a good citizen of these United States for the last 31 years, (5) you worked in construction for the seven to eight years and then you worked for yourself for 23 years, and (6) you operate a small one-man General contracting company. 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 your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct as evidenced by your three NJPs, SCM and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded that it showed a complete disregard of military authority and regulations. The Board also considered the negative impact your conduct likely had on the good order and discipline of your command. Additionally, the Board found that the record clearly reflected that your active duty misconduct was intentional and willful. Further, the Board also determined that the evidence of record did not demonstrate that you were not responsible for your conduct or that you should otherwise not be held accountable for your actions. Furthermore, the Board noted that you were given an opportunity to earn a better characterization of service when the BCD you received at your SPCM was suspended, but failed to do so as evidenced by your continued misconduct. Ultimately, the Board concluded that the discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service, which was terminated by your BCD. Finally, the Board was not persuaded by your contention that your service was honorable or distinguished and noted that your pattern of serious misconduct spanned almost your entire period of active duty. 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. While the Board commends you for your post-discharge employment, 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 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,

6/6/2023

