



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

█
Docket No. 4121-23
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 5 June 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 entered active duty with the Navy on 13 May 1996. On 30 May 1997 and 3 July 1997, you received non-judicial punishment (NJP) for operating a motor vehicle while under the influence of alcohol and unauthorized absence for three hours. On 4 August 1997, civil authorities convicted you of driving under the influence of alcohol. On 21 August 1997, the Substance Abuse Rehabilitation Department evaluated you and recommended you attend the Level II Rehabilitation Treatment Program. On 5 September 1997, you completed the Level II Rehabilitation Treatment Program. On 5 February 1998, you were involved in an alcohol related incident.

Subsequently, you were notified of pending administrative separation action by reason of a pattern of misconduct, civil conviction, and rehabilitation failure. After you waived your rights, civil authorities convicted you of an additional charge of driving under the influence of alcohol on 22 April 1998. On 26 June 1998, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge by reason of misconduct due to a pattern of misconduct, civil conviction and rehabilitation failure with an Other Than Honorable (OTH) characterization of service. On 2 November 1999, the SA approved the CO's recommendation and directed OTH characterization of service by reason of misconduct due to a pattern of misconduct. On 3 November 1999, 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 to upgrade your discharge and contentions that you chose to be discharged because of personal issues facing you at the time, you earned a Bachelor's Degree since your discharge, and you have been trouble free. For purposes of clemency and equity consideration, the Board noted you provide supporting documentation describing your 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 NJPs and civil conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact your conduct had on the good order and discipline of your command. Further, while the Board took into consideration your contentions, the Board noted that there is no evidence in your record, and you submitted none, to substantiate your contention that you were given a choice to remain in the Navy. Based on the evidence in your record, you were properly processed for administrative separation as a result of a history of misconduct that included multiple alcohol related incidents. 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. While the Board carefully considered the evidence you submitted in mitigation and commends your achievement of post-discharge education, 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.

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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,

6/15/2023

[REDACTED]

Executive Director

Signed by: [REDACTED]