



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. 4250-23

Ref: Signature Date

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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 11 September 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 Navy and began a period of active duty on 13 December 1955. On 18 September 1956, you were found guilty at a special court-martial (SPCM) of two periods of unauthorized absence (UA) totaling 29 days and were sentenced to confinement at hard labor for five months, forfeiture of \$10.00 pay per month for three months, and reduction in rank to E-1. On 19 March 1957, you were found guilty at a second SPCM of a period of UA which lasted 68 days, ending with your apprehension, and were sentenced to confinement at hard labor for three months, to perform hard labor without confinement for two months, forfeiture of \$28.00 pay per month for six months, and to be reduced in rank to E-1. On 16 October 1957, you were found guilty at a third SPCM of a period of UA which lasted 36 days, ending with your apprehension, and were sentenced to perform hard labor without confinement for 15 days and forfeiture of \$25.00 pay per month for six months. On 3 February 1958, you were found guilty at a fourth SPCM of two specifications of UA totaling 20 days and breaking arrest and were sentenced to confinement at hard labor for six months, forfeiture of \$28.00 pay per month for six months, and

a Bad Conduct Discharge (BCD). Prior to your discharge, you admitted to committing the offenses to get a punitive discharge because you did not like taking orders, you wanted to be with your family, and you could not adjust to military life. On 3 April 1958, you waived your restoration to request restoration to duty. After completion of appellate review, on 27 June 1958, you were discharged with a BCD.

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 your contentions that: (1) besides being married at 16 and being immature, marital problems were a key factor to your bad discharge, and (2) over the years you have been employed as a maintenance electrician, are retired with a good record, have been remarried for 40 years, feel that you have paid for your mistakes over the years, and you would like the Board to consider this request not only for you but for your family. For purposes of clemency and equity consideration, the Board noted you did not provide 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 your misconduct, as evidenced by your SPCMs, 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. The Board also considered the likely negative effect your conduct had on the good order and discipline of your command. The Board determined that your record clearly reflected your willful misconduct and demonstrated you were unfit for further service. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. 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,

9/21/2023

