



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

██████████
Docket No. 4881-23
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 13 November 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 to 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 the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Navy with a pre-service history of drug use and criminal arrests, and began a period of active duty on 15 February 1980. Within your first two months of service, on 3 April 1980, you were subject to nonjudicial punishment (NJP) for violations of the Uniform Code of Military Justice to include an Article 86 offense due to an unauthorized absence and two specifications under Article 134 for conduct prejudicial to good order and discipline. Your medical records reflected frequent visits to military sick call, to include an entry on 3 May 1980, indicating your visit on that date was the 30th time you had been seen for various complaints. During August 1980, you were in the sick bay ward and received a second NJP for another Article 86 violation due to leaving your appointed place of duty, the sick bay ward, without

authority, as well as an Article 92 violation for failure to obey the lawful order of a hospital corpsman to get in your rack. As a result, you were administratively counseled that excessive future involvement with military authorities would result in discharge. However, you were subject to an additional four NJPs between October of 1980 and February of 1981 for numerous offenses including Article 128, for assault by striking another service member with a closed fist, Article 91, for striking a superior petty officer in the face with your fist, Article 86 for being absent without authority and for failure to go to morning quarters at the prescribed time on two separate locations, Article 92, for failure to obey lawful orders to perform your required duties, and, Article 134, for unlawfully entering the personal locker of another sailor.

On 17 February 1981, you were given notice of processing for administrative separation by reason of misconduct due to your excessive involvement with military authorities. After consulting with legal counsel, you chose to waive your right to a hearing before an administrative board and, instead, submitted a statement acknowledging your offenses and difficulty in adjusting to military lifestyle; although you also expressed your desire to continue serving and your belief that you could improve your conduct and overcome your reputation. The recommendation for your separation was processed and approved, and you were discharged under Other Than Honorable (OTH) conditions on 14 April 1981.

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 your discharge was unjust because you were never found unfit to serve by any court and, because your discharge characterization, denied benefits for which you would otherwise be eligible. Additionally, the Board noted you checked the "PTSD" and "Other Mental Health" boxes on your application but chose not to respond to the Board's 26 June 2023 letter requesting supporting evidence for your claims. 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 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 found that your conduct showed a complete disregard for military authority and regulations. The Board noted you were given multiple opportunities to correct your deficiencies but chose to continue to commit misconduct. Additionally, in light of your discharge being due to administrative separation as opposed to a punitive discharge adjudged by a court, the Board found no inequity regarding the lack of a determination by a court. Your record reflects that you were afforded all due process incident to your administrative separation. The reason for your discharge was due to your frequent violation of the UCMJ, and your statement in response to the notification acknowledged your difficulty in adapting to military lifestyle. 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 an OTH 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 is attached 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,

11/29/2023

