



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. 5128-23
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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 2 November 2023. The names and votes of the members of the panel 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 this 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).

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.

A review of your record shows that you enlisted in the Navy and entered active duty on 18 September 1973. On 6 February 1974, you were convicted by a summary court-martial (SCM) for unauthorized absence (UA) from 18 January 1974 to 4 February 1974. On 21 March 1974, you received non-judicial punishment (NJP) for violating Article 86 of the UCMJ for being UA from 1 March 1974 to 14 March 1974. On 14 June 1974, you were convicted by a special court-martial (SPCM) for being UA and larceny of a motorcycle. You were sentenced to confinement with hard labor for 6 months, forfeiture of pay for six months, and a Bad Conduct Discharge (BCD). On 5 November 1974, the Commandant █ approved your special court-martial findings and sentence. You subsequently were discharged from the Navy on 20 December 1974 with a BCD.

You contend that you injured your back and pelvis during boot camp training and that your misconduct was due to having severe pain that was not addressed by your command despite your requests. You further allege you continue to have chronic pain in your back and leg as a result of the injuries. You request an upgrade to your characterization of service and a disability discharge.

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 disability discharge. You contend that you deserve a disability discharge because you suffered from conditions while in-service that resulted in your misconduct. 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 SCM, NJP, and SPCM 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. Finally, the Board noted you provided no evidence to substantiate your contentions. 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. 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.

Based on the Board's determined that your BCD remains appropriate, the Board also determined your basis for separation also remains appropriate. The Board concluded that you were ineligible for disability processing based on your punitive discharge resulting from misconduct. However, even if you were eligible, the Board decided insufficient evidence exists to support a finding that you were unfit for continued naval service at the time of your discharge from the Navy. The Board noted there was no evidence of medical conditions in-service and you provided no evidence of diagnoses post-service. 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. 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,

12/3/2023



Executive Director

Signed by: 