

## **DEPARTMENT OF THE NAVY**

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

> Docket No. 5149-23 Ref: Signature Date

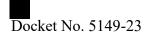
## Dear Petitioner:

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 15 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 commenced active duty on 15 February 1985. On 29 August 1985, your command received notification that you had potentially omitted pre-service civilian charges on your application for enlistment. In spite of your admission that you had failed to disclose pre-service charges of aggravated burglary, simple burglary, and contributing to the delinquency of a juvenile, your Commanding Officer chose to recommend your retention based on your stated remorse and hard work at the command. You were issued an administrative remarks (Page 13) counseling concerning deficiencies in your performance and/or conduct. You were advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge

On 9 December 1985, you received non-judicial punishment (NJP) for unauthorized absence and were issued a Page 13 counseling / retention warning the following day. On 30 January 1986, you received NJP for conspiracy to commit larceny, wrongful disposal of military property, and UA.

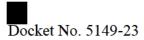


Subsequently, you were notified of pending administrative separation processing with an Other Than Honorable (OTH) discharge by reason of misconduct due to commission of a serious offense. You elected to consult with legal counsel and requested an administrative discharge board (ADB). You subsequently agreed to waive your ADB in exchange for a recommendation for General (Under Honorable Conditions) (GEN) characterization of service and your commanding officer recommended you be separated with a GEN. The Separation Authority approved your separation and you were so discharged on 18 July 1986.

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 characterization of service and your contention that you were discharged under pretense of theft but your arrest record shows that you did not commit the charges against you. 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 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 the likely negative impact your repeated misconduct had on the good order and discipline of your command. The Board also noted that you were given opportunities to address your conduct issues but you continued to commit misconduct. Regarding your contention that you were discharged based on your civilian offenses, the Board first noted that your pre-service misconduct was not the basis of your discharge and you were retained by the Navy after your civilian charges were discovered. Rather, it was your two NJPs that formed the basis of your administrative separation from the Navy; misconduct that would not appear in a local civilian criminal background check. Therefore, the Board was not persuaded by your contention of innocence and wrongful discharge. As a result, the Board concluded significant negative aspects of your service outweigh the positive aspects and continues to warrant a GEN characterization. While the Board carefully considered the evidence you submitted in mitigation, 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. 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,

