



**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. 5176-23  
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 16 July 1985. On 10 July 1989, you exercised a twenty-four-month extension in exchange for authorized compensation. On 20 November 1989, you were arrested by civilian authorities in █ for driving under the influence (DUI). You were later sentenced, by a civilian court, to rehabilitation programs, traffic points, suspension of your driver's license, and fines.

On 22 December 1989, you received non-judicial punishment (NJP) for failure to obey a lawful order and unauthorized absence (UA). Additionally, 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 17 April 1990, you received NJP for dereliction of duty, and three specifications of UA. You then received another Page 13 counseling / retention warning. On 4 October 1990, you received your final NJP for UA.

Subsequently, you were notified of pending administrative separation processing with an Other Than Honorable (OTH) discharge by reasons of misconduct due to pattern of misconduct and

commission of a serious offense. You elected to consult with legal counsel, after which you waived your right to have your case heard by an administrative discharge board (ADB). The Separation Authority directed your discharge for misconduct due to a pattern of misconduct with an OTH characterization of service and you were discharged on 31 December 1990.

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 contentions that you served your country for five plus years, you have taken full responsibility for your behavior, you had a DUI off base and were downgraded as a result, and you were punished by losing rank and military benefits for life for making an outburst when you decided not to re-enlist and be deployed during █, which has mentally impaired you for life. Additionally, the Board noted you checked the "Other Mental Health" box on your application but chose not to respond to the 22 June 2023 letter from the Board requesting evidence in support of your claim. 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 likely negative impact your repeated misconduct had on the good order and discipline of your command. The Board further noted that you were given multiple opportunities to address your conduct issues but you continued to commit misconduct. The Board also noted that, while your civilian DUI was noted in your record, you were not punished in a military forum for this offense. 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 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,

9/25/2023

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