



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

█
Docket No. 5839-23
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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 16 February 2024. 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 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, 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).

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Navy and commenced a period of active duty on 16 April 1984. You were counseled on 19 March 1986 and 18 August 1986 for two instances of failure to pay just debts, and you were notified further misconduct may result in the initiation of administrative separation proceedings. On 19 August 1986, you received non-judicial punishment (NJP) for unauthorized absence (UA), and dereliction of duty. A portion of your punishment was suspended unless vacated by continued misconduct. On the same day, you were counseled and informed continued deficiencies in conduct may result in the initiation of administrative separation proceedings. On

9 September 1986, your punishment from your previous NJP was vacated due to your continued misconduct. On the same day, you received NJP for two specifications of failure to obey a lawful order. You received your third NJP, on 6 January 1987, for UA. Consequently, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to your pattern of misconduct. You elected your right to consult with counsel and to have your case heard by an Administrative Discharge Board (ADB). However, on 12 February 1987, you began a period of UA. An ADB convened in your absence and recommended your discharge from naval service with a General (under honorable conditions) (GEN) character of service due to your pattern of misconduct. Notwithstanding, your commanding officer recommended your discharge from naval service with an Other Than Honorable character of service.

On 3 May 1987, you returned from UA. Then, you went UA on two more occasions in June 1987. On 25 June 1987, you were convicted at a special court martial (SPCM) for UA, and wrongful use of cocaine. You were sentenced to confinement, forfeiture of pay, and a Bad Conduct Discharge (BCD). The convening authority approved and affirmed your sentence. After completion of all levels of review, on 16 November 1988, you were separated with a BCD as a result of your court martial conviction.

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 characterization of service. You contend you were informed you would receive a GEN character of service while on leave to aide your mother, and you were injured during your service. 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 request for supporting evidence of your claim. For purposes of clemency and equity consideration, the Board considered the evidence you submitted in support of your application.

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 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. In addition, the Board noted your misconduct included a drug offense. The Board determined that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. Further, 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. Finally, the Board noted you provided no evidence, other than your personal statement, to substantiate your contentions. The Board considered that you were, in fact, recommended for a GEN discharge but chose to continue your pattern of misconduct that ultimately resulted in your SPCM conviction and BCD.

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. 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,

3/5/2024

