



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

█
Docket No. 6171-23
Ref: Signature Date

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Dear █

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 December 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 U.S. Navy and began a period of active duty service on 29 August 1978. Upon the completion of your initial recruit training, you reported for duty on board the █ (█) in █, █ on 7 December 1978.

On 26 December 1978 you commenced an unauthorized absence (UA). Your UA terminated after thirteen (13) days on 8 January 1979. On 11 January 1979, you received non-judicial punishment (NJP) for your 13-day UA. You did not appeal your NJP.

On 6 April 1979, you received NJP for UA and insubordinate conduct. You did not appeal your second NJP. On 29 June 1979, you received NJP for failing to obey a lawful order, wearing an unclean uniform, and insubordinate conduct. You did not appeal your third NJP.

On 1 October 1979, you commenced another UA. Your UA terminated after 1,001 days on 28 June 1982 with your arrest by ██████████, ██████████ authorities. You were charged with possession of a stolen vehicle, driving under suspension, speeding, and marijuana possession. You were confined in ██████████ County Jail until you were released to military authorities on 28 July 1982.

However, on 14 August 1982, you commenced another UA when you escaped from Navy custody. On the same day, your command declared you to be a deserter. Your UA terminated after 1,117 days with your arrest by civilian authorities in ██████████, ██████████ on 4 September 1985.

On 20 November 1985, you were convicted at a General Court-Martial (GCM) of both UA and desertion. You were sentenced to confinement at hard labor for ninety (90) days, forfeitures of pay, and a discharge from the Navy with a Bad Conduct Discharge (BCD). On 13 January 1986, the Convening Authority approved the GCM sentence as adjudged. Upon the completion of GCM appellate review in your case, on 9 February 1987, you were discharged from the Navy with a BCD.

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 sole contention that your enlistment contract was void before entering. Additionally, the Board noted you checked the "Other Mental Health" box on your application but chose not to respond to the Board's 27 October 2023 letter requesting supporting evidence of your claim. 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. The Board did not believe that your record was otherwise so meritorious to deserve an upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined the record reflected that your misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not be held accountable for your actions. The Board also concluded that there was no credible or convincing evidence in the record that your enlistment contract was ever void, invalid, or erroneous.

The Board also noted that, although it cannot set aside a conviction, it might grant clemency in the form of changing a characterization of discharge, even one awarded by a court-martial. However, the Board concluded that despite your contentions this was not a case warranting any clemency as you were properly convicted at a GCM of serious misconduct. The simple fact remained is that you left the Navy while you were still contractually obligated to serve and you went into a UA status more than once without any legal justification or excuse for over 2,100



days. As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your pattern of misconduct and total disregard for good order and discipline clearly merited your 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. 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,

12/19/2023

