



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

█
Docket No. 6457-23
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 16 October 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 28 September 1989. On 25 April 1990, you began a period of unauthorized absence. During your UA, you became the subject of a civilian arrest warrant as the suspected assailant in an aggravated assault with a deadly weapon. You subsequently surrendered to military authority on 26 April 1990. You then commenced a 4-day period of UA on 4 May 1990 that also ended with your surrender to authorities.

On 1 June 1990, you were convicted at Summary Court-Martial of two specifications of UA and committing an assault upon a civilian by stabbing with him with a knife and intentionally inflicting grievous bodily harm. You were sentenced to confinement at hard labor and forfeiture of pay.

Subsequently, you were notified of pending administrative separation processing with an under Other Than Honorable conditions (OTH) discharge by reason of misconduct due to commission of a serious offense. You waived your rights to consult counsel, submit a statement, or have your case heard by an administrative discharge board (ADB). The Separation Authority

subsequently directed your discharge with an OTH characterization of service. You were so discharged on 25 June 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 would like to have your status upgraded to receive benefits from the of Department of Veterans Affairs (VA), that the incident was off base, and that your command knew about the situation at the time of the occurrence. 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 your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced your SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct, the likely negative impact your misconduct had on the good order and discipline of your command, and the service discrediting nature of your assault. Additionally, the Board was not persuaded by your argument that the offense happened off base and that you informed your command that it had occurred. The fact that the assault occurred off-base and was committed against a civilian, compounded the offense by bringing discredit upon the Navy. While admitting your culpability to your chain of command was commendable, the Board determined that action does not sufficiently mitigate the severity of the offense. Finally, 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.

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,

10/30/2023

