



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. 6924-23
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 13 November 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 began a period of active duty on 14 August 2002. On 28 January 2003, you received your first nonjudicial punishment (NJP) for violating a lawful order by underage drinking and were issued administrative remarks retaining you in the Navy, documenting this infraction, and advising you that subsequent violations of the UCMJ (Uniform Code of Military Justice), conduct resulting in civilian conviction, or deficient conduct or performance of duty could result in administrative separation under Other Than Honorable (OTH) conditions. On 13 June 2003, you failed Level I outpatient alcohol treatment. You received a second NJP, on 15 November 2004, for failure to obey an order by wrongfully purchasing and consuming alcohol underage and were again issued administrative remarks retaining you in the Navy. On 11 May 2005, you received a third NJP for two specifications of failing to obey a lawful order by wrongfully purchasing, consuming, and possessing alcohol underage, and by wrongfully smoking cigarettes in an unauthorized location. Consequently, you were notified of your pending administrative processing by reason of alcohol rehabilitation failure, at which time you waived your right to consult with qualified counsel. Your commanding officer recommended you be discharged with a General (Under Honorable Conditions) (GEN) characterization of service. Ultimately, on 19 May 2005, you were discharged with a GEN characterization of service by reason of alcohol rehabilitation failure.

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 discharge and contention that you were suffering the loss of your best friend while still attempting to continue working your naval job as if nothing happened, and you were suppressing or trying to mask your grief by using alcohol. The Board noted you checked the "Other Mental Health," box on your application but chose not to respond to the Board's request for evidence in support of your claim. For purposes of clemency and equity consideration, the Board noted you provided a copy of your Certificate of Release or Discharge from Active Duty (DD Form 214), consumer report investigation, and criminal background check correspondence.

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 NJPs, 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. Further, the Board noted that you were given multiple opportunities to correct your deficiencies but continued to commit misconduct. Additionally, the Board found you were afforded a great deal of clemency when you were processed only for alcohol rehabilitation failure despite a record of misconduct that qualified for pattern of misconduct and commission of a serious offense processing; bases of separation that would have qualified you for an Other Than Honorable characterization of service. Finally, characterization of service is based, in part, on military bearing/character averages which are computed from marks assigned during periodic evaluations. Your military bearing/character average was 2.0. An average of 2.5 in military bearing/character was required at the time of your separation for a fully Honorable characterization of service. 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 the 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 is attached 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,

11/28/2023

