



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

█  
Docket No. 7108-23  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 17 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 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).

The Board determined your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Navy and began a period of active duty on 22 December 1986. As part of your enlistment processing, on 25 November 1986, you signed the Navy's Drug and Alcohol Abuse Statement of Understanding. On 29 March 1988, you were found guilty at Special Court-Martial (SPCM) of four violations of the Uniform Code of Military Justice, including Article 134, indecent assault, Article 130, unlawful entry, Article 128, assault, and Article 95, resisting apprehension. Your sentence included 90-days confinement and a Bad Conduct Discharge (BCD). While confined at Naval Brig █, you requested to be returned to duty and were thus subjected to a voluntary psychiatric evaluation for fitness for duty, at Naval Hospital █ You were diagnosed with alcohol abuse (in remission), and found

psychiatrically fit for full duty. Following your release from confinement and placement on appellate leave, you were offered inpatient treatment at the Department of Veterans Affairs hospital for alcohol abuse, although there are no records indicating whether or not you pursued this treatment. After appropriate legal review of your case, you were discharged with a BCD on 3 July 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 character, and your contentions that: (1) after discharge, you married, had 2 children, and became a truck driver, (2) you are now 55 years old, and it has been 33 years since your service, (3) you were 18 when you joined the Navy, and had never been away from your mom and dad, (4) you started drinking late in your naval career, which you regret, because it got you into trouble, (5) you believe the Navy made a man out of you, you are grateful to have since found a church home and to be an upstanding citizen, (6) you had double hip surgery which has left you disabled and in need of acute therapy, (7) you wish for your discharge to be upgraded so you can receive benefits, and (8) you've lived a good life as a truck driver delivering America's goods, but you don't have adequate health insurance, and would greatly appreciate some mercy. For purposes of clemency and equity consideration, the Board noted you provided no documentation describing post-service accomplishments or advocacy letters.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded that it showed a complete disregard of military authority and regulations. The Board also considered the negative impact your conduct likely had on the good order and discipline of your unit. Therefore, the Board concluded your discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service, which was terminated by your BCD. 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 a BCD characterization. While the Board commends your post-discharge good conduct, 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 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,

11/21/2023

