



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. 7332-23
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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 23 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).

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues 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 active duty on 11 December 2000. On 20 November 2001, you received non-judicial punishment (NJP) for unauthorized absence (UA) and making a false official statement. Additionally, you were issued an administrative remarks (Page 13) counseling concerning deficiencies in your performance and/or conduct. You were advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge.

On 2 January 2002, you received NJP for forgery of a service member's signature on his personal check, with intent to defraud, and for making false official statements, with intent to deceive, to the Disciplinary Review Board.

On 16 January 2002, you received NJP for forgery of another service member's signature on his personal check, with intent to defraud and for abandoning your watch without authority.

On 8 April 2002 you received NJP for wrongfully possessing a false military identification card and for wrongfully disposing of a false military identification card by throwing it in a river.

On 15 April 2002, you were notified of pending administrative separation processing with an Other Than Honorable (OTH) discharge by reason of misconduct due to pattern of misconduct. Following notification, 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 and you were so discharged on 25 April 2002.

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 use veterans' benefits, you were told that after some time your discharge would be adjusted, and it has been over twenty years. For purposes of clemency and equity consideration, the Board noted you did not provide supporting 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 by NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact your repeated misconduct had on the good order and discipline of your command. The Board also considered that you were given multiple opportunities to address your conduct issues but you continued to commit misconduct. The Board noted that you waived your rights to consult counsel, submit a statement, or have your case heard by an ADB, which was your chance for retention, and opportunity to earn a better characterization of service. Additionally, the Board also noted there is no provision of law or in Navy regulations that allows for re-characterization of service due solely to the passage of time. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits.

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,

11/8/2023

