



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

■
Docket No. 7485-23
Ref: Signature Date



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 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, 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 12 February 1985. On 27 April 1986, you began a period of unauthorized absence (UA) which lasted 15 days. On 18 July 1987, you began a second period of UA which lasted 28 days and resulted in you missing ship movement in two separate occasions. On 19 September 1987, you were convicted by special court martial (SPCM) for a period of UA and two instances of missing ship movement. You were sentenced to reduction to the inferior grade of E-1, confinement for a period of 45 days, and forfeiture of pay in the amount of \$400.00 for a period of two months.

On 9 October 1987, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to commission of a serious offense. On 13 October 1987, you decided to waive your procedural rights. On 29 March 1988, your SPCM sentence was approved. On 11 April 1988, your commanding officer recommended an Other than Honorable (OTH) discharge characterization of service by reason of misconduct due to commission of a serious

offense. After the separation authority approved your separation, on 17 June 1988, you were so discharged.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for relief. On 17 May 1995, the NDRB denied your request after concluding your discharge was proper as issued. On 15 July 2015, this Board denied your previous request for a discharge characterization upgrade.

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 for a discharge upgrade and contention that; (a) you were not discharged after your court martial, you were given 45 days in the brig, and your counsel gave you the choice to stay in the Navy or go home, (b) you did not fully understand what you were doing and were told that you would receive all your benefits, and (c) you made a mistake by missing ship movement. Additionally, the Board noted you checked the "PTSD" box on your application but chose not to respond to the Board's 12 September 2023 letter requesting supporting evidence of your claim. For purposes of clemency and equity consideration, the Board noted you did provide a copy of your █ Referral documents.

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 SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact it had on the good order and discipline of your unit. Further, 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. Finally, the Board noted you provided no evidence to substantiate your contentions. 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. 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 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,

11/1/2023

