



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

█
Docket No. 7809-23
Ref: Signature Date

█
█
█
Dear █

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 father's 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 13 December 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 entered active duty with the Navy on 3 October 1978. On 28 December 1979, you received non-judicial punishment (NJP) for 27 days of unauthorized absence (UA), disobeying a superior petty officer and possession of marijuana. Between 26 February 1980 and 12 June 1980, you were in a UA status on three separate occasions totaling 108 days. On 24 June 1980, you were in a UA status for 123 days until apprehended on 25 September 1980. On 21 October 1980, you went into a UA status for 72 days until surrendering on 12 January 1981. On 13 December 1982, a special court-martial (SPCM) convicted you of five specifications of UA totaling 452 days. As a result, you were sentenced to confinement for 60 days, forfeiture of pay, and a Bad Conduct Discharge (BCD). After the BCD was approved at all levels of review, on 3 February 1984, you were so discharged.

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 contentions that you suffer from bad dreams and behavior problems due to being electrocuted while serving in the Navy, you were young and immature, and you need veterans' benefits. The Board also noted you checked the "PTSD" and "Other Mental Health" boxes on your application but did not respond to the 2 October 2023 letter from the Board requesting supporting evidence for your claims. 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 these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP and SPCM, outweighed the mitigating evidence in your case. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved a drug related offense. The Board determined that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. The Board noted that illegal drug use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. While the Board took into consideration your contentions of suffering from bad dreams and behavior problems due to being electrocuted, the Board noted that there is no evidence in your record, and you submitted none, to substantiate your allegations. Further, the Board noted that the evidence of record did not show that you were not responsible for your conduct or that you should not be held accountable for your actions. 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. 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 upgrading your characterization of service or granting an upgraded characterization of service 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,

12/26/2023

█