



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

█
Docket No. 7835-23

Ref: Signature Date



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 submitted within the statute of limitations, the Board found it in the interest of justice to review your request. A three-member panel of the Board, sitting in executive session, considered your application on 4 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 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).

You enlisted in the United States Navy and commenced a period of active duty on 13 February 1976. You reported to the (█) on 3 November 1976. On 31 July 1977, you were assigned marks of 2.8 in Professional Performance and Adaptability and 2.0 in Military Behavior. These marks were justified by comments stating that your "ability is greatly hampered by his attitude towards the Navy is completely negative. He openly and consistently flaunts authority of any kind. His work must be frequently supervised as he will do just enough to 'get by' thus he has become a hindrance to his shipmates who always end up carrying his share of the load. He frequently argues over the validity of the tasks to which he is assigned. He is habitually late for quarters." On 2 November 1977, you were assigned marks of 2.6 in Professional Performance and Adaptability, 2.8 in Military Appearance and 2.0 in Military Behavior. These marks were justified by command comments noting "[Petitioner] has the capabilities of being an

excellent electrician and is only thwarted by his attitude. Although the knowledge and aptitude are there the desire is not. He will successfully complete an assigned task if that task is deemed necessary by his priorities. He is very rebellious and immature. His work must be constantly supervised to ensure proper completion and he himself must be kept under close scrutiny and his whereabouts continually monitored.” You also received non-judicial punishment (NJP) during this evaluation period for violating Uniform Code of Military Justice (UCMJ) Article 86: UA for about 8 hours, and Article 91, for three specifications of disobeying the lawful order of a senior petty officer. You did not appeal this NJP.

On 3 January 1978, you were transferred to the █ Due to the performance marks that you received while attached to your previous command, you were not recommended for reenlistment. However, your Commanding Officer positively endorsed an extension on active duty or transfer to the ready reserve. Specifically, your CO stated “[Petitioner] has had only one behavior infraction resulting in NJP.... His behavior grades from █ are believed to be lower than warranted based on other service record documentation. However, based on his performance while aboard █ and based on my personal evaluation of his potential, the recommendation is herewith submitted that, after completion of his reserve obligation, Petitioner be given an Honorable separation.”

On 12 February 1979, you were released from active duty with a General (Under Honorable Conditions) discharge. On 15 September 1979, you affiliated with the Naval Reserves and were assigned to █ At this time you executed a Statement of Understanding in which you acknowledged the requirement to attend 90% of 48 drills for a minimum of 42 drills annually and to perform 14 days of annual active duty for training each fiscal year. On 18 March 1980, your Officer-in-Charge (OIC) noted that you maintained 100% participation in all drills from date of assignment through February 1980. Unfortunately, your affiliation with that Unit was cancelled as a result of notice by the activity holding your service record that your service record contained an RE-4 reenlistment code. On 21 July 1980, you were authorized a Reenlistment Code Waiver and, on 6 August 1980, you were authorized back pay for unpaid drills and affiliation with new unit.

On 12 February 1982, you were discharged from the Ready Reserves with a record of Naval Reserve Service indicating that you only attended a total of 80 drills during period 13 February 1979 and 12 February 1982, falling far short of the required 126 drills. You were discharged from the reserves with a “General Discharge/Convenience of the Government (Inadequate Military Behavior Performance Marks) auth: █ letter dated 21 July 1980.”

You previously submitted a petition to the Naval Discharge Review Board (NDRB) and were granted partial relief on 9 April 1985. On 9 April 1985, the NDRB changed your discharge to “General Discharge/Expiration of Obligated Service, auth: Bureau of Naval Personnel Manual, Article 3850300.” Additional relief was not granted.

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: (1) your desire to change your discharge characterization and your reenry code, (2) your assertion that you were singled out by one chief during your service attached to the █ (3) your contention that you never received counseling related to your poor performance marks, (4) the fact that you only received one NJP during your service, and (5) the positive endorsements from your subsequent commands noting quality performance. For purposes of clemency and equity consideration, the Board noted that you provided advocacy letters and documentation of post-service accomplishments.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your poor performance while attached to the █ was properly documented on your evaluations, as well as on administrative counseling chits (Page 13 Administrative Remarks). You acknowledged these performance marks and signed the formal counseling chits. You also acknowledged that you were not eligible for reenlistment due to these performance marks. The Board deferred to the marks given to you by your chain of command. The Board felt that, even if your chief was singling you out, the marks were reviewed and approved by your reporting senior, who was an officer in your chain of command. The Board acknowledged that your CO from the █ recommended that “after completion of his reserve obligation, [you] be given an Honorable separation.” However, the Board highlighted that the recommended change was to occur *after completion of your reserve obligation*, which you did not successfully complete. The Board concluded that had you satisfactorily completed your reserve requirement, you might have been issued an Honorable characterization of Service. But, as you only completed 80 of the 126 required drill periods, the Board found that your record continues to warrant a GEN characterization of service and an RE-4 reenlistment code. If you do have evidence that you completed the required drill periods, it may help the Board reach a different conclusion.

Therefore, 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, poor performance, and unsatisfactory participation while in the Reserve. 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



Docket No. 7835-23

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,

12/7/2023

