



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

Docket No. 7961-23
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 12 January 2024. 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 Naval Reserves and began a period of active duty on 2 May 1988. After completion of your initial period of active duty for training, you were honorably released from active duty on 17 August 1988. You reenlisted in the Navy and began a period of active duty on 28 December 1988. Between 29 January 1990 and 9 July 1990, you had two periods of unauthorized absence (UA) totaling three-days, 3 hours, and 45 minutes. On 17 January 1991, you received nonjudicial punishment (NJP) for three instances of communicating a threat. On the same date, you were counseled concerning your previous NJP offenses and advised that failure to take corrective action could result in administrative actions. On 9 April 1992, you received a second NJP for dereliction of duty and two instances of UA from appointed place of duty. On 14 April 1992, you began a period of UA which lasted 31 days and resulted in your apprehension by civil authorities. On the same date, you missed ship movement. On 16 June 1992, you were convicted by special court martial (SPCM) for breaking restriction, a period of UA, and missing ship movement. You were found guilty and sentenced to a Bad Conduct Discharge (BCD),

reduction to the inferior grade of E-1, confinement for a period of 35 days, and forfeiture of pay in the amount of \$523.00 for a period of three-months. After completion of all levels of review, you were discharged on 28 May 1993 with a BCD.

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 contentions that: (a) you were experiencing emotional stress, (b) you were young at that time and realized you handled the situation in a wrongful manner, (c) your grandmother was sick and you decided to go UA to visit her, (d) you were discharged six months prior to the completion of your term in service, (e) you have become a family man, put two daughters through college, and have a son who is a freshman in college, (f) you have been working in the security industry since 1992 and consider yourself to be an asset to your country and society. 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 NJPs and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Additionally, unexpectedly absenting yourself from your command placed an undue burden on your chain of command and fellow service members, and likely negatively impacted mission accomplishment. Further, the Board noted that you were given the opportunity to correct your deficiencies but continued to commit misconduct. 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 you for your post-discharge accomplishments, 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 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,

1/23/2024

