



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

█
Docket No. 8054-23
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 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 11 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.

After a previous period of Honorable service, you reenlisted and commenced a second period of active duty on 13 April 1990. On 8 September 1991, you were arrested by civilian authorities for battery and interfering with civil rights, found guilty, and you were placed on probation and fined. Then, on 2 October 1992, you received non-judicial punishment (NJP) for a total of three days unauthorized absence (UA). You were subsequently issued a counseling warning and any further deficiencies in your performance or conduct could result in administrative separation. On 16 February 1993, you received your second NJP for a total of five days UA.

On 16 March 1993, you were arrested for driving under the influence (DUI), and driving on a suspended/revoked license. A line of duty investigation (LODI) was conducted, and found that you were driving under the influence of alcohol at the time of your accident. The injuries sustained by you were not received in the line of duty and were a result of your own misconduct. Ultimately, you were found guilty by a civilian court of DUI on 4 August 1993. On 30 August 1993, you received your third NJP for eight days UA. As a result, you were notified of administrative separation processing for pattern of misconduct and civilian conviction. After you waived your rights, the Commanding Officer (CO) made his recommendation to the Separation Authority (SA) that you be discharged with an Other Than Honorable (OTH) characterization. The SA accepted the recommendation and directed you be discharged for pattern of misconduct. You were so discharged on 30 September 1993.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for relief. The NDRB denied your request, on 23 September 1996, after determining your discharge was proper as issued.

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 you filed a request to separate early from the Navy and your request was approved, when you signed your DD Form 214 you didn't know what an OTH was until you asked, and you were commuting 144 miles and your car broke down a few times while commuting to work. The Board noted you checked the "PTSD" box on your application but did not respond to the Board's request for supporting evidence. For purposes of clemency and equity consideration, the Board noted you provided a personal statement but no 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 civilian convictions, 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. Further, the Board concluded that your discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service, which was terminated by your separation with an OTH. Finally, the Board considered the likely discrediting effect your civilian convictions had on the Navy. 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,

10/19/2023

[REDACTED]

Executive Director

Signed by: [REDACTED]