



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

██████████  
Docket No. 8132-23  
Ref: Signature Date

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██  
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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 20 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 enlisted in the U.S. Navy and began a period of active duty on 11 July 1961. On 26 February 1962, you were found guilty at summary court-martial for wrongfully communicating a threat and unlawfully striking a person on the jaw with your fist. Then on 12 July 1962, you were found guilty by the civilian authorities for battery and sentenced to 30 days confinement suspended for a year and \$105 fine. On 10 August 1962, you received non-judicial punishment (NJP) for failure to obey a lawful order and driving in a reckless manner bringing discredit upon the armed forces. Then, on 12 September 1962, you were found guilty by the civilian authorities for petty theft and sentence to 105 days confinement in lieu of payment of a \$525 fine and your punishment of 30 days confinement was vacated from your previous civilian conviction.

As a result, you processed for administrative separation. Your Commanding Officer recommended to the Separation Authority (SA) that you be discharged and be assigned an Other

Than Honorable (OTH) characterization based on your misconduct. The SA accepted the recommendation and directed you be discharged. You were so discharged on 26 October 1962.

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 were lied to at enlistment as you were promised you would be assigned to the Seabees, you made it clear to the recruiter that would be the only way you would enlist, you developed a drinking problem after being stationed at Naval Air Training Base, and this led to the drunken incident and your ultimate choice to go home. The Board noted you checked the "Other Mental Health" 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 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 civil convictions, NJP, and SCM, 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 noted you provided no evidence to substantiate your contentions and your record does not show any guarantees in your enlistment contract for the Seabees. Therefore, the Board was not persuaded by your arguments. 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,

1/17/2024

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