



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

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Docket No. 8242-23

Ref: Signature Date

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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 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 3 November 1981. On 9 December 1982, you received non-judicial punishment (NJP) for violating Uniform Code of Military Justice (UCMJ) Article 86, for three specifications of unauthorized absence (UA) totaling 69 days. You did not appeal this NJP. On 17 February 1983, you began another period of UA and were declared a deserter on 18 March 1983. You remained absent until you were apprehended by civilian law enforcement and were turned over to military control on 13 April 1984. On 17 May 1984, you were found guilty at Special Court Martial (SPCM) of violating UCMJ Article 86, for a 421-day period of UA. You were sentenced to a Bad Conduct Discharge (BCD), reduction to E-1, 60 days of confinement, and forfeitures of pay. After completion of appellate review, you were discharged from the Navy due to your misconduct with a BCD as adjudged and assigned a "RE-4" reentry code.

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 upgrade your discharge characterization, (2) your youth at the time of the misconduct, and (3) your assertion of positive post-service conduct. For purposes of clemency consideration, the Board noted that you did not provide advocacy letters or 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 misconduct, as evidenced by your NJP and SPCM conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it involved repeated and extended periods of UA. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command. The Board determined that such misconduct is contrary to the Navy core values and policy and places an unnecessary burden on fellow shipmates. The Board found that your active duty misconduct was intentional and willful and demonstrated you were unfit for further service. The Board felt that you received advice from qualified counsel through the court martial process and were aware of your rights. You received appellate review of your sentence and there was no legal errors or injustices noted in your case. As a result, the Board concluded that your conduct constituted a significant departure from that expected of a Sailor and continues to warrant a BCD, as issued by the court. 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 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,

12/6/2023

