



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. 8531-23
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 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 3 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, 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.

You enlisted in the Navy and commenced active duty on 1 March 1974. After completing your period of obligated service, you were honorably discharged on 8 June 1978. You later reenlisted on 27 December 1979 and commenced a second period of active duty.

On 29 July 1982, the Municipal Court of █, █ issued a warrant for your arrest for one count of Felony Burglary (PC 459). From 31 July 1982 to 3 August 1982, you were in the custody of the █ County Police. On 12 August 1982 you were convicted of Felony Burglary and, on 23 September 1982, you were sentenced to eight months in the █.

On 29 September 1982, you were notified of pending administrative separation processing with an Other Than Honorable (OTH) discharge by reason of misconduct due to a civilian felony conviction. You waived your rights to consult counsel, submit a statement, or have your case heard by an administrative discharge board. The Separation Authority subsequently directed your discharge with an OTH characterization of service, and you were so discharged on 14 December 1982.

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 to change your discharge characterization of service and your contentions that you were not given the opportunity to state your case before a court martial, did not have any legal representation, and that this is the only blemish on your life record. Additionally, the Board noted you checked the “PTSD” box on your application but chose not to respond to the 16 October 2023 letter from the Board requesting evidence in support of your claim. 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 your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by a civilian felony conviction during your second enlistment, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely discrediting effect it had on the Navy. Additionally, there is no precedent within this Board’s review, for minimizing the “one-time” isolated incident. As with each case before the Board, the seriousness of a single act must be judged on its own merit, it can neither be excused nor extenuated solely on its isolation. However, the Board noted that while you received an Honorable discharge from your first enlistment, your record of misconduct from that term included six non-judicial punishments (NJP) and one Special Court Martial (SPCM). Therefore, the Board was not persuaded by your argument that you made only one mistake. Finally, regarding your contention that you were not legally represented or court-martialed, the Board noted you waived your right to consult with legal counsel as part of your administrative separation processing and the Navy was not required to court-martial you in order to administratively separate you for a civilian conviction.

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,

1/24/2024

