



**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. 9442-23  
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 reconsideration application on 17 November 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 service on 1 July 1958. At the completion of your initial training you were stationed on board the █ (█).

On 18 November 1958, you received non-judicial punishment (NJP) for an unauthorized absence (UA) that lasted two (2) days. You did not appeal your NJP. On 2 September 1959, you received NJP for UA. You did not appeal your NJP.

On 23 November 1959, you received NJP for another UA. You did not appeal your third NJP. On 23 June 1960, you received NJP for a UA that lasted three (3) days. You did not appeal your fourth NJP. On 24 April 1961, the Navy administratively extended your enlistment day-for-day to make up for the "lost time" due to your cumulative absences of five (5) days.

On 6 June 1961, you were arrested by federal authorities while in possession of stolen Government property. On 27 June 1961, you were formally charged in federal court with the unlawful possession of stolen Government property (a 204 pound manganese-bronze casting).

On 26 July 1961, pursuant to your guilty plea, you were convicted for the unlawful possession of stolen Government property. You were sentenced to one (1) year imprisonment and a \$500 fine. However, the Court directed you to serve only sixty (60) days in jail and pay a \$150 fine, while suspended the balance of the fine and the remaining confinement. The Court also placed you on probation for five (5) years.

On 23 August 1961, your command notified you of administrative separation proceedings by reason of misconduct due to a civilian conviction. You elected in writing to waive your rights to submit a statement, and to have your case heard by a board of not less than three (3) officers.

On 14 September 1961, your commanding officer (CO) determined you were unfit for further retention in the naval service and recommended to the Chief of Naval Personnel (CNP) that you be separated with an undesirable discharge by reason of misconduct. On or about 26 September 1961, an Enlisted Performance Evaluation Board recommended your discharge under conditions Other Than Honorable (OTH). On 28 September 1961, CNP approved and directed your separation with an OTH characterization of service by reason of misconduct. Ultimately, on 24 October 1961, you were separated from the Navy for misconduct with an OTH discharge characterization and not recommended for reenlistment.

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 served in the Navy honorably and were stationed on board the █, (b) you were sent to Naval Hospital █ with an injury that required surgery, (c) after surgery you were billeted in Navy housing on medical leave to await your honorable discharge, (d) a shipmate asked you to haul some scrap metal to sell that was dropped alongside the road, and he said we would split the proceeds if I helped him haul it, (e) after you picked it up you were told it belonged to the Government and you were arrested, and (f) you were still on pain medication at the time of your arrest. For purposes of clemency and equity consideration, the Board considered the entirety of the evidence you provided in support of your application.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. The Board did not believe that your record was otherwise so meritorious to deserve an upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that characterization under OTH conditions is generally warranted for misconduct and is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor. The Board determined that the record clearly reflected your misconduct was intentional and willful and indicated you were unfit for further service. Moreover, the Board noted that the evidence of record did not demonstrate

that you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions.

The Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average calculated from your available performance evaluations during your enlistment was approximately 2.88 in conduct. Navy regulations in place at the time of your discharge recommended a minimum trait average of 3.0 in conduct (proper military behavior) for a fully honorable characterization of service. The Board determined that your misconduct totaling four (4) NJPs coupled with a federal civilian conviction was not minor in nature. The Board concluded that your conduct marks during your active duty career were a direct result of your cumulative misconduct, all of which further justified your OTH characterization.

As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your serious misconduct and disregard for good order in discipline clearly merited your discharge. While the Board carefully considered the evidence you submitted in mitigation, 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. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. 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,

12/1/2023

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