



**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. 9675-23  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your brother's naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your brother's 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 13 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).

Your brother entered active duty with the Navy on 4 June 1979. On 22 October 1979, he received non-judicial punishment (NJP) for failure to go at time prescribed to appointed place of duty. On 21 December 1979, he received NJP for unauthorized absence (UA) for two days and nine specifications of failure to go at time prescribed to appointed place of duty. After being counseled that any further misconduct would likely result in administrative separation processing, on 8 January 1980, he received NJP for being in a UA status for one day and three specifications of failure to go to appointed place of duty. Subsequently, he was notified of pending administrative separation action by reason of misconduct due to frequent involvement with military authorities.

After waiving his rights, his commanding officer (CO) forwarded his package to the separation authority (SA), recommending his discharge based on Type Warranted by Service Record with a General (Under Honorable Conditions) (GEN) characterization of service. In the meantime, on

31 January 1980, your brother requested early return to civilian community, which was approved by his CO. The SA approved the CO's recommendation and directed a GEN characterization of service by reason of misconduct due to frequent involvement with military authorities. On 6 February 1980, he was so discharged.

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 upgrade your brother's discharge and contentions that he deserves an upgrade because he started turning his life around, his behavior problems worsened due to his unsolved family issues, and he was suffering from anxiety and abandonment issues. For the purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing your brother's 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 brother's misconduct, as evidenced by his NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of his misconduct and the likely negative impact his conduct had on the good order and discipline of his command. Further, the Board noted that there is no evidence in his record, and you submitted none, to support your contentions. Finally, the Board noted your brother was already provided a large measure of clemency when his command chose not to pursue an Other Than Honorable characterization of service based on his multiple incidents of misconduct during a period of service lasting approximately eight months. As a result, the Board concluded significant negative aspects of your brother's active service outweigh the positives aspects and continues to warrant a GEN characterization of service. While the Board expressed their condolences for your loss, 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,

1/11/2024

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