



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



Docket No. 10430-23
Ref: Signature Date



Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 26 February 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, 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).

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) 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 began a period of active duty on 29 December 1986. Upon your enlistment, you were granted a waiver for pre-service use of alcohol and drug abuse. On 29 February 1988, you began a period of unauthorized absence (UA) which lasted 82 days and resulted in you missing ship's movement. On 5 July 1988, you were convicted by summary court martial (SCM) for the period of UA and missing ship movement. You were sentenced to reduction to the inferior grade of E-2 and confinement for a period of one month. Between 2 August 1988 to 4 August 1988, you began two periods of UA and resulting in you again missing ship's movement. Consequently, on 18 August 1988, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to commission of a serious

offense, at which point, you decided to waive your procedural rights. On 19 August 1988, you received nonjudicial punishment (NJP) for a period of UA and missing ship movement. On 20 August 1988, your commanding officer recommended an Other Than Honorable (OTH) discharge characterization by reason of misconduct due to commission of a serious offense. On 25 August 1988, the separation authority approved and ordered an OTH discharge characterization by reason of misconduct due to commission of a serious offense. On 20 September 1988, you were 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 for a discharge upgrade and contentions that: (a) you were a young man who was away from your wife and seven-year-old son, (b) your wife became very hysterical when learning that your son was raped by its babysitter, (c) your executive officer denied your request to go home, (d) your counsel understood your urgency and offered you a General discharge if you agreed to spend 30 days in the brig for being UA, (e) your counsel rescinded the offer and recommended an OTH discharge characterization. For purposes of clemency and equity consideration, the Board noted you did provide a character letter of support and a letter of commendation.

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 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. Additionally, the Board considered the likely negative impact it had on the good order and discipline of your unit. Finally, the Board noted you provided no evidence, other than your personal statement, to substantiate your contentions of unfair treatment. 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. 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. 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 the 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,

3/7/2024

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