



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. 10481-23
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 reconsideration application on 5 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 U.S. Navy and began a period of active duty service on 25 August 1977. Your pre-enlistment medical examination, on 15 July 1977, and self-reported medical history noted no psychiatric or neurologic conditions or symptoms. On 15 March 1978, you reported for duty on board the █ in █.

On 15 May 1978, you commenced a period of unauthorized absence (UA) that terminated after thirteen (13) days on 28 May 1978. On 2 June 1978, you received non-judicial punishment (NJP) for your 13-day UA. You did not appeal your NJP.

On 7 July 1978, you received NJP for two separate UA specifications. You did not appeal your NJP. On 4 August 1978, you received NJP for UA. You did not appeal your NJP. On the same day, your command issued you a "Page 13" retention warning (Page 13) documenting your frequent disciplinary infractions. The Page 13 expressly advised you that if no improvement was forthcoming within a reasonable time you may be processed for an administrative discharge which could be under Other Than Honorable conditions (OTH).

On 25 September 1978, your command issued you a Page 13 documenting your alcohol abuse. The Page 13 expressly warned you that your continued alcohol abuse may result not only in disciplinary action, but may result in being enrolled in a required rehabilitation program and in processing for an administrative discharge.

On 10 October 1978, you commenced another UA. While in a UA status, you missed your ship's movement on 16 October 1978. Your command declared you to be a deserter on 11 November 1978. Your UA finally terminated after sixty-six (66) days on 15 December 1978.

On 25 January 1979, you were convicted at a Summary Court-Martial (SCM) of your 66-day UA, missing movement, and for being absent from your appointed place of duty. You were sentenced to confinement for thirty (30) days and forfeitures of pay.

On 12 July 1979, you received NJP for three separate UA specifications and insubordinate conduct. You did not appeal your NJP. On 8 August 1979, you received NJP for three separate UA specifications. You did not appeal your NJP. On 9 August 1979, you received NJP for a 3-day UA. You did not appeal your NJP.

On 10 August 1979, your command notified you of administrative separation proceedings by reason of misconduct due to frequent involvement of a discreditable nature with military authority (aka a pattern of misconduct). You consulted with counsel and expressly waived in writing your right to request a hearing before an administrative separation board. In the interim, on 18 September 1979, you received another NJP. Ultimately, on 3 October 1979, you were separated from the Navy for misconduct with an OTH discharge characterization and assigned an 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, your desire for a discharge upgrade and contentions that: (a) you went undiagnosed as an alcoholic being allowed to legally drink at 17 years old, (b) you were never insubordinate and never got in trouble at sea, (c) back then alcoholism was considered a character defect, (d) someone in your chain of command could have intervened and then you could have continued honorably, (e) post-service you have been an essential worker for the U.S. postal service for thirty-six (36) years, and (f) you have no criminal record. For purposes of clemency and equity consideration, the Board noted you did not provide documentation describing post-service accomplishments or advocacy letters. 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 as to

deserve a discharge 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 lengthy pattern of 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 2.20 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 concluded that your cumulative misconduct was not minor in nature and that your conduct marks during your active duty career were a direct result of your serious misconduct and 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 misconduct and disregard for good order in discipline clearly merited your OTH. While the Board commends you for your post-discharge employment, 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,

1/19/2024

