



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. 10632-23
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 submitted within the statute of limitations, the Board found it in the interest of justice to review your request. A three-member panel of the Board, sitting in executive session, considered your application on 26 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 this 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 United States Navy and commenced a period of active duty on 29 November 1963. On your enlistment application, you acknowledged pre-service arrests for ungovernable and breaking and entering with auto theft.

On 18 March 1964, you received non-judicial punishment (NJP) for violating Uniform Code of Military Justice (UCMJ) Article 86, for a period of unauthorized absence (UA), and Article 92, for failure to obey a lawful order by going out of bounds. On 25 June 1964, you received your second NJP for violating UCMJ Article 92, for failure to obey a lawful order by disregarding a red light and having no inspection sticker. You did not appeal either of these NJPs.

On 7 August 1964, you were found guilty at Special Court-Martial (SPCM) of violating UCMJ Article 121, for stealing a wallet with currency (total value of about \$10.50) and a Polaroid camera with carrying case (total value of about \$135), Article 86, for ten specifications of failure to go to your appointed place of duty, Article 91, for disobeying a lawful order, and Article 134, for wrongfully wearing the wrong rating badge. You were awarded a Bad Conduct Discharge (BCD), reduction to E-1, forfeitures of pay, and three months confinement. On 25 September 1964, you received a mental health evaluation while in the brig after disclosing homosexual inclination. It was recommended that you be processed for separation due to your diagnosed condition of "Emotional Instability Reaction, severe." You waived restoration stating, "I have no desire to return to duty because I don't think I would be any benefit to the Navy." On 6 November 1964, you were discharged from the Navy with a BCD as adjudged at the SPCM 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: (1) your desire to change your discharge characterization and narrative reason for separation, (2) your youth and maturity at the time of misconduct, and (3) your assertion that your discharge characterization is unjust in light of the minor nature of your infractions. For purposes of clemency and equity consideration, the Board noted that you did not provide advocacy letters or documentation of post-service accomplishments.

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 your SPCM conviction and NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it involved multiple instances of theft and UA. Further, the Board also considered the negative impact your conduct had on the good order and discipline of your command. The Board determined that such misconduct is contrary to the Navy core values and policy, renders such Sailor unfit for duty, and places an unnecessary burden on fellow shipmates. The Board felt that you received advice from qualified counsel throughout your court martial and that you were aware of your rights. The Board concluded that your conduct constituted a significant departure from that expected of a Sailor and continues to warrant a BCD as issued by the court. The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade.

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,

2/6/2024

