



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. 10885-23
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 2 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, 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 18 April 1988. Your pre-enlistment physical examination, on 5 January 1988, and self-reported medical history noted no psychiatric or neurologic conditions or symptoms. On 26 August 1988, you reported for duty on board the █ in █.

On 1 January 1991, you were convicted at a Special Court-Martial (SPCM) of conspiracy to wrongfully make/sell false military identification cards, and eleven (11) separate specifications of the wrongful sale of military identification cards. You were sentenced to confinement for five (5) months, a reduction in rank to the lowest enlisted paygrade (E-1), forfeitures of pay, and a

discharge from the Navy with a Bad Conduct Discharge (BCD).

In the interim, your separation physical examination, on 23 February 1991, and self-reported medical history both did not note any psychiatric or neurologic conditions or symptoms. On 12 March 1991, the Convening Authority approved the SPCM sentence as adjudged. However, the Naval Clemency and Parole Board subsequently remitted your adjudged BCD to a General (Under Honorable Conditions) (GEN) characterization of service. Upon the completion of appellate review in your case, on 27 May 1992, you were separated from the Navy with a GEN 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 are deserving of an upgrade based on your youth at the time of your misconduct, your candor (both then and now), the excessive harshness of your punishment, and your proven rehabilitation since, (b) you accept full responsibility for your actions, (c) throughout the military justice process, you complied with investigators and took a plea deal, (d) you received a commuted sentence due to his good behavior in confinement, (e) compared to your peers, you received a disproportionately harsh punishment, (f) rather than impose justice equitably, your chain of command apparently sought to make an example out of you due to your limited remaining time in service, (g) your misconduct occurred over thirty (30) years ago when you were a young man, and (h) post-service you have worked hard to restore your good name and have done so in an exemplary fashion, serving as a model employee, husband, father, and member of your community. For purposes of clemency and equity consideration, the Board considered 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, and that even though flawless service is not required for an Honorable discharge, in this case a GEN discharge characterization and no higher was appropriate. The Board noted that, although one's service is generally characterized at the time of discharge based on performance and conduct throughout the entire enlistment, the conduct or performance of duty reflected by only a single incident of misconduct may provide the underlying basis for discharge characterization. The Board determined that characterization under GEN or under Other Than Honorable 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 the record clearly reflected that your misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not be held accountable for your actions.

The Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. The Board also noted that, although it cannot set aside a conviction, it might grant

clemency in the form of changing a characterization of discharge, even one awarded by a court-martial. However, the Board concluded that, despite your contentions, this was not a case warranting any clemency as you were properly convicted at a SPCM of serious misconduct. Moreover, the Board considered that you already received a large measure of clemency when your punitive discharge was changed to a GEN. 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 and discipline clearly merited your GEN. 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,

2/7/2024

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Executive Director

Signed by: █