



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

█  
Docket No. 376-24  
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 application on 28 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 on 16 November 1987. You received non-judicial punishment (NJP), on 10 March 1989, for drunk and disorderly. Subsequently you were issued a counseling warning and advised that further deficiencies in your performance or conduct may result in disciplinary action and in processing for administrative separation. On 12 July 1990, you received your second NJP for assault, damage to government property, and drunk and disorderly conduct. You were recommended and attended Level III alcohol treatment on 31 January 1991. On 14 March 1991, you were discharged from the treatment program as a treatment failure. You then received your third NJP, on 13 June 1991, for nine specifications of unauthorized absence (UA), provoking speeches, destruction of government property, and incapacitated for duty.

Consequently, you were notified of administrative separation processing for pattern of misconduct, commission of a serious offense, and alcohol abuse rehabilitation failure. After you waived your rights, the Commanding Officer (CO) made his recommendation to the Separation Authority (SA) that you be discharged with an Other Than Honorable (OTH) characterization. The SA accepted the recommendation and directed you be discharged for pattern of misconduct. In the meantime, on 8 July 1991, you were found guilty at summary court-martial (SCM) for failure to obey lawful written order and breaking restriction. Prior to discharge, you were offered treatment and elected not to receive treatment prior to your discharge. Ultimately, you were discharged on 2 August 1991 with an OTH.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for relief. The NDRB denied your request, on 12 November 1998, after determining your discharge was proper as issued.

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 so you can access Department of Veterans Affairs benefits. You contend that you are still having nightmares from being shot in Guam, that your nightmares are getting increasingly worse, and that you suffer from your Naval experiences. The Board noted you checked the "PTSD" box on your application but did not respond to the Board's request for supporting evidence of your claim. 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. Specifically, the Board determined that your misconduct, as evidenced by your NJPs 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. Further, the Board concluded that your discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service, which was terminated by your separation with an OTH. Furthermore, the Board noted you provided no evidence, other than your statement, to substantiate your contentions. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. 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,

3/7/2024

