



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. 755-24
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 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 entered active duty with the Navy on 3 April 1984. On 27 February 1986 and 16 May 1986, you received non-judicial punishment (NJP) for unauthorized absence (UA) and dereliction in the performance of duty, respectively. On 12 June 1986 and 26 July 1986, you received NJP for offenses that included two specifications of dereliction in the performance of duty, making a false official statement, failure to obey a lawful order, and losing military property.

Consequently, you were notified of pending administrative separation action by reason of a pattern of misconduct. You elected to consult with legal counsel and subsequently requested an administrative discharge board (ADB). The ADB found that you committed misconduct due to a pattern of misconduct and recommended you receive an Other Than Honorable (OTH) characterization of service. The separation authority (SA) concurred with the ADB and directed an OTH discharge by reason of misconduct due to a pattern of misconduct. On 23 October 1986, 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 to upgrade your discharge and contentions that you were wrongfully accused, prosecuted without counsel, all charges were false, no proof was provided to the ADB, and your superior made false entries on the watch log. You also contended you would like to receive all awards you earned while on active duty. For purposes of clemency and equity consideration, the Board noted you provide supporting documentation describing post-service accomplishments and a personal statement.

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, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact your conduct had on the good order and discipline of your command. Further, contrary to your contentions, the record shows that you requested an ADB, which found that you committed misconduct due to a pattern of misconduct, and recommended you receive an OTH discharge. Finally, the Board noted that there is no evidence in your record, and you submitted none, to substantiate your contention that false entries were made to the watch log. The Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. The Board determined your personal statement was insufficient to overcome the presumption in your case.

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 commends your post-discharge accomplishments and 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 mitigated 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.

Regarding the awards you earned while on active duty, the Board noted that Navy Personnel Command provided you with a NAVPERS 1650 (Transmittal of Entitlement to Awards) on 19 October 2005, showing the awards you are entitled and adding any awards missing from your record. As a result, a correction to the DD Form 214 (DD Form 215) was added to your record documenting your missing awards.

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,

3/13/2024

