



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. 1007-24
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 reconsideration application on 15 March 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 21 August 1973. Your pre-enlistment physical examination, on 21 August 1973, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms.

On or about 3 June 1974, you received non-judicial punishment (NJP). There is no indication in your service record that you appealed your NJP. On 17 July 1974, you received NJP for larceny and wrongful appropriation. You did not appeal your NJP.

On 8 August 1974, you received NJP for unauthorized absence (UA). You did not appeal your NJP. On 26 August 1974 you commenced a period of UA. On 25 September 1974, your command declared you to be a deserter. Your UA terminated after seventy-six (76) days on 10 November 1974.

On 16 December 1974, you underwent a psychiatric evaluation. The Medical Officer concluded you did know right from wrong, that you could adhere to the right, and that you were mentally competent to participate in your own court-martial defense.

On 24 January 1975, you were convicted at a Special Court-Martial (SPCM) for your 76-day UA. You were sentenced to confinement at hard labor for three (3) months, and forfeitures of pay for three (3) months. On 7 February 1975, the Convening Authority approved the SPCM sentence.

On 18 February 1975, your command issued you a "Page 13" retention warning (Page 13). The Page 13 placed you on notice that your commanding officer was considering your administrative separation due to your frequent involvement of a discreditable nature with military authorities, but that any such action was being held in abeyance pending a review of your future conduct.

However, on 28 April 1975, you commenced a period of UA that terminated on 29 April 1975. Later the very same day, you commenced another UA. Your command declared you to be a deserter on 30 May 1975. Your UA terminated after 139 days on 15 September 1975.

Three days later, on 18 September 1975, you commenced another UA. Your command declared you to be a deserter on 20 October 1975. Your UA terminated after 250 days, on 25 May 1976, with your arrest by civilian authorities in ██████████. You were returned to military control on 28 May 1976.

You subsequently submitted a voluntary written request for an administrative discharge for the good of the service under other than honorable conditions (OTH) for the good of the service to escape court-martial for your last three (3) UA offenses (1, 139, and 250 days, respectively). As a result of this course of action, you were spared the stigma of a court-martial conviction for your multiple UAs, as well as the potential sentence of confinement and the negative ramifications of receiving a punitive discharge from a military judge.

In the interim, on 4 July 1976, you commenced a period of UA that terminated on 6 July 1976. On 9 July 1976, you received NJP for your 2-day UA. You did not appeal your NJP.

On 26 July 1976, the Separation Authority approved your voluntary discharge request to escape trial by court-martial. On 10 August 1976, your separation physical examination and self-reported medical history both noted no psychological or neurological issues or symptoms. You also expressly answered "no" on your medical history to having a head injury.

On 12 August 1976, you received NJP for two (2) separate specifications of insubordinate conduct. You did not appeal your NJP. Ultimately, on 13 August 1976, you were separated from the Navy in lieu of a trial by court-martial with an OTH discharge characterization.

On 20 February 2014, the Board denied your initial discharge upgrade request. You had contended, in part, that a head injury caused your misconduct.

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) at the time of your enlistment you were seventeen (17) years old and also an alcoholic and drug user, (b) while at sea you were a good Sailor, (c) you had mental problems from childhood that carried into your active duty service, (d) not all of your active duty service was bad, and (e) while you must be punished for the bad, you must also be rewarded for the good. Additionally, the Board noted you checked the "PTSD" box on your application but chose not to provide supporting evidence of your claim. For purposes of clemency and equity consideration, the Board considered the entirety of the evidence you provided in support of your application, which consisted solely of your DD Form 214 and the information you placed on DD Form 149.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. The Board did not believe that your record of service 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 simple fact remains is that you left the Navy while you were still contractually obligated to serve and you went into a UA status without any legal justification or excuse on no less than four (4) separate occasions totaling approximately 466 days. The Board determined that the record clearly reflected your 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 2.1 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 conduct marks during your active duty career were a direct result of your pattern of serious misconduct which further justified your OTH discharge 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 discharge. 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,

3/21/2024

