



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. 1054-24
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 26 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, 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).

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Navy and began a period of active duty on 11 July 1961. On 26 February 1962, you were convicted by summary court martial for wrongfully communicating a threat to kill, and assault by striking a person on the jaw with your fist. You were found guilty and sentenced to confinement at hard labor for a period of 15 days, restricted to base for a period of 30 days, and forfeiture of pay in the amount of \$25.00. On 29 June 1962, you were charged by the █ Justice Court with assault by willfully using force and violence upon a female. On 10 August 1962, you received nonjudicial punishment (NJP) for failure to obey a lawful order from your commanding officer (CO) and driving in a reckless manner. On 11 September 1962,

you were charged by the █ Justice Court with the offense of petty theft by willfully and unlawfully taking away personal property of another. 12 September 1962, you were found guilty by the █ Justice Court for petty theft, sentenced to 105 days confinement in lieu of payment of a \$525 fine, and your punishment of 30 days confinement was vacated from your previous civilian conviction. On 26 September 1962, you were found guilty of the crime of battery and sentenced to 30 days in state confinement. On 3 October 1962, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to conviction by civil authorities. Subsequently, you decided to waive your procedural rights. On 5 October 1962, your commanding officer recommended an Other Than Honorable (OTH) discharge characterization by reason of misconduct. On 17 October 1962, the separation authority approved and ordered an OTH discharge characterization by reason of misconduct. On 26 October 1962, you were discharged.

On 17 January 2024, this Board denied you previous request for a discharge characterization upgrade.

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 contention that: (a) there is no enlistment contract that will support your assertion that you enlisted as a SEABEE: (b) you told your CO that the Navy was not going to let you serve as a SEABEE and that you were not going to be stationed in the desert working with jetfighters for another three years: (c) the charges that were brought up during your SCM proceedings were false as you were trying to defend yourself: (d) the civil authority charges from your previous NJP were false as you contend you were not driving recklessly: (e) your petty theft charges from 12 September 1962 were false and never happened. For purposes of clemency and equity consideration, the Board noted you did submit a copy of a statement of support.

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 NJP, SCM, and civil convictions, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact it had on the good order and discipline of your unit. Further, the Board considered the likely discrediting effect your civilian misconduct had on the Navy. Finally, the Board noted you provided no evidence to substantiate your contention. 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 the 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,

3/18/2024

