



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. 1063-24
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 21 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 13 July 1955. Between 28 December 1956 and 14 August 1968, you received five non-judicial punishments for unauthorized absences. In the meantime, on 12 July 1957, you were found guilty at summary court-martial (SCM) for violation of a lawful general regulation and possession of a false military identification card.

On 16 August 1958, you started a period of unauthorized absence (UA) that ended when you were arrested for petty theft. Subsequently, you were convicted by a special court-martial (SPCM) for 48 days UA. You were sentenced to confinement, forfeiture of pay, reduction in rank and a Bad Conduct Discharge (BCD). You waived your right to restoration on 10 December 1958. After completion all levels of review, on 6 February 1959, you were discharged with a BCD.

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 your contention that there was compelling circumstance leading to your SPCM and there was an inequitable response to your leave request to attend your mother's funeral. For purposes of clemency and equity consideration, the Board noted you provided a personal statement that described the circumstances of your case, an Army National Guard discharge certificate, and evidence of post-discharge employment.

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, SCM, and SPCM, 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 a BCD. Furthermore, the Board noted that in your waiver of restoration, you requested the execution of your discharge and asserted "I don't like the Navy." Finally, the Board was not persuaded by your implied contention that you were somehow unfairly convicted by the SPCM and noted you provided no evidence, other than your statement, to substantiate your assertion that you were denied leave to attend your mother's funeral or discharged unjustly. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant a BCD. While the Board carefully considered the evidence you submitted in mitigation and commends you for your post-discharge accomplishments, 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,

3/1/2024

