



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

██████████
Docket No. 1976-24
Ref: Signature Date

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Dear ██████████

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 8 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 3 July 1990. Your enlistment physical examination, on 30 May 1990, and self-reported medical history both noted no psychological or neurological issues, symptoms, history, or counseling. On 22 June 1992, you reported for duty on board the ██████████ (██████████) in ██████████, ██████████.

On 20 November 1993, you received non-judicial punishment (NJP) for two (2) separate specifications of misbehavior of a sentinel or lookout. As documented on the NJP charge sheet, at 0620 hours you were found sleeping at your post (specification 1), and then approximately ten (10) minutes later, at 0630 hours, you abandoned your post before you were properly relieved

(specification 2). You were awarded the maximum punishment permitted at NJP. You did not appeal your NJP. On 12 December 1993, your command issued you a "Page 13" retention warning (Page 13) documenting your misbehavior as a sentinel or lookout. The Page 13 expressly advised you that any further deficiencies in your performance will result in extra military instruction, reduction in rate, or administrative separation due to unsatisfactory performance, or up to all of the above actions.

However, on 17 December 1993, you commenced an unauthorized absence (UA) that terminated on 1 January 1994. On 3 January 1994, you received NJP for breaking restriction, failing to obey a lawful order, and for your 15-day UA. You were again awarded the maximum punishment permitted at NJP. You did not appeal your NJP.

On 7 January 1994, your command notified you of administrative separation proceedings by reason of misconduct due to the commission of a serious offense. On 9 January 1994, you waived your rights to consult with counsel, submit statements, and to request a hearing before an administrative separation board. Your commanding officer (CO) recommended to the Separation Authority (PERS-83) that you be separated with a General (Under Honorable Conditions) (GEN) characterization of service. However, on 7 February 1994, PERS-83 approved and directed your discharge with an under Other Than Honorable conditions (OTH) characterization of service. Ultimately, on 11 February 1994, you were separated from the Navy for misconduct with an OTH discharge characterization and assigned an RE-4 reentry code.

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 changes to your narrative reason for separation, separation code, and reentry code. You contend that: (a) it has been almost thirty (30) years since your separation, (b) you have gone onto a successful twenty-six (26) year career as a district manager at an industrial scale/weighing company, (c) you have earned an associate degree, bachelor's degree, and a master's degree, (d) you belong to a community car club that regularly conducts charitable events that donates to coat drives, food drives, and other social support resources in your community, (e) your post-service achievements over the last thirty (30) years provide a sufficient basis for upgrading your discharge characterization at this time, and (f) your CO recommended that you should receive a GEN discharge. For purposes of clemency and equity consideration, the Board considered the entirety of the evidence you provided in support of your application.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. The Board did not believe that your record was otherwise so meritorious to deserve an upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record, and in this case an OTH discharge characterization and no higher was appropriate. The Board determined that characterization 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 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 noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your serious misconduct and disregard for good order in discipline clearly merited your discharge. While the Board 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 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,

3/12/2024

