



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. 7690-23
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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 8 December 2023. 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 this 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).

The Board determined that your personal appearance would not materially add to their understanding of the issues 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 January 1993. On 11 May 1994, you received non-judicial punishment (NJP) for an orders violation due to underage drinking. On that date, you were also formally counseled concerning your misconduct, and warned that further misconduct could lead to disciplinary action or separation. However, on 26 April 1995, you again received NJP for using disrespectful language toward a Petty Officer and failing to obey a lawful order. Consequently, on 27 April 1995, you were notified of administrative separation (adsep) procedures for commission of a serious offense. The following day, you completed your rights election for the adsep process, waiving your right to an

administrative discharge board. You were ultimately discharged, on 3 June 1995, with an Other Than Honorable (OTH) characterization of service.

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 change your discharge character of service from OTH to Honorable or General Under Honorable Conditions (GEN), and to have your rank of E-3 restored. You contend that: (1) you are a two-time Bronze Star medal recipient, (2) your Dishonorable discharge was unjust, (3) you were court-martialed for Art. 92, underage drinking, and counseled you were being retained, yet were Dishonorably discharged, (4) due to missing records, you do not know why you were discharged, who filed the charge, what the charge was, or what the result of the charge was, (5) your discharge was upgraded to OTH without your knowledge, and you have not received a DD 215, (6) you received an evaluation prior to discharge where you were reduced from a 3.6 to a 1.0 Sailor, which could not be correct, because it would mean your knowledge of rate declined—which it did not, (7) you are not eligible for a Veteran ID card, (8) your personnel files do not reflect such harsh punishment, (9) it is a life sentence for a non-violent crime, (10), it has been 30 years, you are married with two children and two grandchildren, you have worked and stayed out of trouble, and you have obtained degree in computer Systems and Computer Engineering, a Qualys Vulnerability Management Certification, are pursuing a Cyber Security certification, and have been employed by █, for 16 years. For purposes of clemency and equity consideration, the Board noted you provided a personal statement, service record documents, and an advocacy letter from a fellow veteran.

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 two NJPs, 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. The Board also considered the negative impact your conduct likely had on the good order and discipline of your unit. Further, the Board noted you were given an opportunity to continue your service after your first NJP but continued to commit misconduct. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits or enhancing educational or employment opportunities. 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 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.

Regarding your contention that you were court-martialed and received a Dishonorable discharge, a review of your official record indicates you were never tried at court-martial, but rather, as stated above, received NJP on two occasions. Further, a discharge cannot be issued as part of

NJP, and a Dishonorable discharge can only be awarded by a General Court-Martial. Since you were never court-martialed, it is not possible for you to have been issued a Dishonorable discharge. Rather, your discharge was OTH, as a result of administrative processing, and that discharge has remained unchanged. For this reason, you also would not have received a DD Form 215. Additionally, although you contend you are a two-time Bronze Star recipient, this appears to be a misunderstanding. A Bronze Star Medal (BSM), is a United States Armed Forces decoration awarded to members of the United States Armed Forces for heroic achievement, heroic service, meritorious achievement, or meritorious service in a combat zone. Review of your record shows you are not a BSM recipient, but rather, you are authorized to wear a bronze service star, which is a miniature star worn on a medal or ribbon to denote an additional award or service period, on both your Southwest Asia Service Medal, and your Armed Forces Expeditionary Medal.

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,

1/9/2024

