



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

█
Docket No. 9814-23
Ref: Signature Date



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 7 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 26 November 1982. On 24 November 1986, you acknowledged that you were being held beyond your end of obligated service due to a pending Article 32 investigation, and trial by court-martial. On 27 February 1987, you were found guilty at special court-martial (SPCM) for wrongful use of a government telephone. You were sentenced to confinement, reduction in rank, a fine, and a Bad Conduct Discharge (BCD). On 8 May 1987, the convening authority approved your sentence, except for that portion adjudging a BCD. After completion all levels of review, you were discharged, on 25 October 1989, at the expiration of your obligated service. You were assigned a General (Under Honorable Conditions) (GEN) 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 for a discharge upgrade and your contentions that

your record was spotless until the infraction, you were a frocked E-5 with your first enlistment ending, the wrongful use of the government telephone was so you could keep in contact with your spouse whose orders were changed from stateside to Germany, and if the current technology capabilities had been available during your enlistment, your infraction would not have occurred. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

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 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 regulations. While, the Board noted that you served time in the brig and made full restitution, the Board considered that your BCD was not approved and determined that you already received a large measure of clemency from the convening authority. The Board was not persuaded by your arguments to justify your misconduct and concluded they exhibit a continued lack of remorse for your actions. Finally, the Board also noted that, although one's service is generally characterized at the time of discharge based on performance and conduct throughout the entire enlistment, the conduct or performance of duty reflected by only a single incident of misconduct may provide the underlying basis for discharge characterization. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant a GEN characterization. While the Board 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. 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,

2/27/2024

