



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. 9874-23

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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your reconsideration application on 19 January 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).

The Board determined that your personal appearance, with or without counsel, 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 originally enlisted in the U.S. Navy and began a period of active duty service on 30 May 1979. Your re-enlistment medical examination, on 7 March 1983, and self-reported medical history noted no psychiatric or neurologic conditions or symptoms. On 14 March 1983, after honorably completing your first enlistment, you immediately reenlisted while being assigned to █.

On 26 October 1983, you received non-judicial punishment (NJP) for dereliction of duty for sleeping on watch. You did not appeal your NJP. On 30 January 1984, you received NJP for an unauthorized absence (UA) due to being absent from your appointed place of duty. You did not appeal your NJP. On 20 February 1984, your command issued you a "Page 13" retention warning (Page 13) expressly warning you that any further misconduct may result not only in disciplinary action but in processing for administrative discharge.

On 7 May 1984, your commanding officer vacated and enforced the suspended portion of your January 1984 NJP due to continuing misconduct. On 7 May 1984, you received NJP for UA. You did not appeal your NJP. On 13 June 1984, you received NJP for obstruction of justice and UA. You did not appeal your NJP.

On 19 July 1984, your command notified you of administrative separation proceedings by reason of misconduct due to a pattern of misconduct. You expressly waived in writing your rights to consult with counsel, and to request a hearing before an administrative separation board.

In the interim, on 11 August 1984, you commenced a period of UA that terminated after six (6) days on 17 August 1984. On 17 August 1984, you received NJP for two separate UA specifications, failing to pay a just debt, and failing to obey a lawful order. You did not appeal your fifth and final NJP. Ultimately, on 21 August 1984, you were separated from the Navy for misconduct with an under Other Than Honorable conditions (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 reinstatement to paygrade E-5. You contend that: (a) you experienced injustices, discrimination and retaliation by your unit and your command, (b) you were assigned to the crane department which oversaw the operation and maintenance of the cranes as well as hydro blasters which were used to clean the barnacles from the hull of the submarines when they docked, and this was usually a 40-day refit and you would be working 24 on, 24 off, (c) once you were ready to start assuming your full-time duties, you started asserting your rank in the department which didn't sit well with a junior E-5 that the CPO had running things, (d) when things took a turn for the worse, you were written up for falling asleep while on duty at the hydro blasters and went to NJP for being UA when you had paperwork showing that you were at a local hospital during that time, and (e) your first command was a spotless tour of duty. Additionally, the Board noted you checked the "PTSD" and "Other Mental Health" boxes on your application but chose not to respond to the Board's 5 December 2023 letter requesting supporting evidence of your claims. For purposes of clemency and equity consideration, the Board considered 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 as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your

conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that characterization under 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 pattern of 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.

As a result, the Board determined that there was no impropriety or inequity in your NJPs or discharge, and the Board concluded that your cumulative 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,

1/29/2024

