



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

█  
Docket No. 10548-23  
Ref: Signature Date

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Dear █

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 5 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, 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).

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) 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 5 August 1987. Between 21 January 1989 to 11 October 1989, you received nonjudicial punishment on three occasions for larceny of government property, failure to report to appointed place of duty, unauthorized absence (UA) from appointed place of duty, willful disobedience of an order, and sleeping while on duty.

On 18 April 1990, you were convicted by summary court martial (SCM) for disrespectful in language towards a superior senior chief petty officer. You were found guilty and sentenced to reduction to the inferior grade of E-1 and confinement on bread and water for three-days. On 11 September 1990, you were convicted by special court martial (SPCM) for two instances of UA from appointed place of duty, five instances of willful disobedience to a petty officer, and making an official statement with the intent to deceive. You were found guilty and sentenced to a Bad Conduct Discharge (BCD) and confinement at hard labor for 75 days. On 23 January 1991, your SPCM sentence was approved. On 16 April 1992, after completion of all levels of review, 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 contentions that: (a) you made some wrong choices in the past as a result of being young, (b) you wish your discharge be upgraded in order to receive VA healthcare, and (c) your offenses were minor and did not rise to the level of court martial. 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 NJPs, SCM, and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact it had on the good order and discipline of your unit. Further, the Board noted you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct. The Board was not persuaded by your arguments that your SPCM misconduct was minor and noted your BCD was approved at all levels of review. 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 a BCD. 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 the 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

