



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

██████████
Docket No. 10858-23
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 application on 12 June 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 21 November 1975. You were discharged on 3 March 1976 with a General (Under Honorable Conditions) (GEN) characterization for Unsuitability. You reenlisted in the U.S. Navy and began another period of active duty on 3 May 1976. On 8 June 1976, you received non-judicial punishment (NJP), for wrongfully use of provoking words.

Unfortunately, some documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Your Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that you were separated from the Navy on 17 June 1976 with a GEN characterization of service, your narrative reason for separation is "Fraudulent Enlistment."

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 contention that your discharge was supposed to be upgraded to Honorable after six months, and your length of service was from 22 November 1975 through 17 June 1976. Additionally, the Board noted you checked the "PTSD" box on your application but did not respond to the Board's request for supporting evidence. For purposes of clemency and equity consideration, the Board also 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 NJP, 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. Additionally, the Board also noted that there is no provision of federal law or regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. Therefore, the Board concluded that your discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service, which was terminated by your separation with a GEN. As a result, the Board concluded significant negative aspects of your service outweigh the positive aspects and continues to warrant a GEN characterization.

Regarding your contention that your dates of service listed on your DD Form 214s are erroneous, the Board found that you had two separate enlistment contracts and periods of service, which are accurately documented on your two DD Form 214s. The Board determined you were properly discharged for unsuitability and, after you fraudulently reenlisted, discharged again for fraudulent enlistment.

Therefore, 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,

6/25/2024

