



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. 389-24
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 18 April 2024. The names and votes of the members of the panel 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, 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).

A review of your record shows that you enlisted in the Navy and entered active duty on 28 February 1983. On 14 April 1985, you were hospitalized after having an asthma attack and were diagnosed with bronchial asthma existing prior to entry. A medical record entry, dated 13 June 1986, noted you were admitted to medical hold due to severe asthma and awaiting a physical evaluation board (PEB). The following day, you commenced a period of unauthorized absence (UA) status. While UA, you wrote numerous letters to Senators and the Secretary of the Navy stating that you went UA due to increasing health problems related to your asthma. On 18 May 1987, you returned to military custody and were placed in medical hold after subsequent asthma attacks. On 30 July 1987, you were convicted by a special court-martial (SPCM) and sentenced to forfeiture of pay, reduction in rate to the pay grade of E-1, and a Bad Conduct Discharge (BCD). You waived your right to appellate review and, after the BCD was approved at all levels of review, you were so discharged on 20 November 1987.

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 upgrade your discharge and to restore your rate to an E-4. You contend the court martial was unfair due to ineffective counsel, a biased judge, and the fact that you suffered from significant medical concerns during military service, which mitigated the circumstances of your separation. For purposes of clemency and equity consideration, the Board noted you provided documentation describing post-service accomplishments.

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 authority and regulations. The Board found your conviction by court martial was administratively correct and your BCD discharge was within regulation and equitable given your unauthorized absence status for nearly a year. Additionally, the Board noted you provided no evidence, other than your statement, to substantiate your contention you did not receive due process in your SPCM. Finally, regarding your request for a medical discharge, the Board determined you were ineligible for disability processing since service regulations directed misconduct processing to supersede disability processing.

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. 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,

5/8/2024

