

## **DEPARTMENT OF THE NAVY**

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

> Docket No. 1061-24 Ref: Signature Date

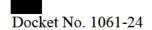


This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your brother's naval record and your application, the Board for Correction of Naval Records (Board) 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 29 March 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).

Your entered active duty with the Navy on 20 August 1974. On 19 February 1975, you received non-judicial punishment (NJP) for unauthorized absence (UA) for 10 days and missing ship's movement. On 29 May 1975, you received your second NJP for two specifications of UA, two specifications of disobeying a lawful order, and disobeying a lawful general regulation. On 7 January 1976, you received another NJP for two specifications of UA totaling 19 days. Subsequently, you went UA until 12 January 1976. On 26 January 1976, you were formerly counseled on not being recommended for reenlistment due to substandard performance. Consequently, you were notified of pending administrative separation action by reason of substandard performance.

Unfortunately, not all the documents pertinent to your administrative separation are 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 30 January 1976 with a General (Under Honorable Condition) (GEN) characterization of service, your narrative reason for separation is "Substandard Performance," your separation code is "JHJ," and your reenlistment code is "RE-4."

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 contention that you were 19 years old when you joined the Navy. For the 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, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact your conduct had on the good order and discipline of your command. Further, the Board noted that the evidence of record did not show that you were not responsible for your conduct or that you should not be held accountable for your actions. Finally, the Board noted you were already provided a large measure of clemency when your command chose not to pursue an Other Than Honorable characterization of service based on your multiple incidents of misconduct during a relatively brief period of service. As a result, the Board concluded significant negative aspects of your active service outweigh the positives aspects and continues to warrant a GEN characterization of service. 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.

