



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. 1326-24
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 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 25 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 28 September 1973. On 8 July 1974, you received non-judicial punishment (NJP) for an unauthorized absence (UA) totaling four days. On 21 August 1974 and 29 August 1974, you received NJP for two specifications of UA, failure to obey a lawful order, failure to go to appointed place of duty, violation of a lawful general order, and leaving from your place of duty. On 10 October 1974, a special court-martial (SPCM) convicted you of three specifications of failure to obey a lawful order and absence from appointed place of duty. Subsequently, you were notified of pending administrative separation action by reason of misconduct due to frequent involvement with military authorities. After waiving your rights in exchange for a General (Under Honorable Conditions) (GEN) discharge, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge with a GEN characterization of service. In the meantime, on 18 December 1974, you requested early return to civilian community, which was approved by your CO. The SA approved the CO's recommendation and directed a GEN characterization of

service by reason of misconduct due to frequent involvement with military authorities. On 20 December 1974, you were so discharged.

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 your counselor told you your discharge would automatically be upgraded to Honorable in six months. 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 and SPCM, 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 there is no evidence in your record, and you submitted none, to support your contention. Additionally, the Board also noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows a discharge to be automatically upgraded after a specified number of months or years. 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 period of service lasting approximately one year. In fact, the Board determined you received the full benefit of your conditional waiver when you were assigned a GEN characterization 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.

Sincerely,

4/4/2024

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