



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

██████████
Docket No. 1382-24
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 24 July 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 to 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 Navy and began a period of active duty on 30 July 1971. You served two Honorable periods of enlistment, with a disciplinary history of a single nonjudicial punishment (NJP) during your first enlistment, and also served in the Republic of Vietnam, earning awards to include a Combat Action Ribbon, Vietnam Service Medal, and Vietnam Campaign Medal.

You reenlisted and commenced a third period of active duty on 30 January 1978. On 8 June 1978, your command submitted notification of disposition with respect to your identified abuse of controlled substances. Your command stated that, although it was possible that you were psychologically dependent on marijuana, you were favorably recommended for participation in the drug exemption program.

On 16 October 1978, you were subject on NJP for violations of the Uniform Code of Military Justice (UCMJ) under Articles 86 for two specifications of multiple-day unauthorized absences (UAs), under Article 87 for missing movement, and under Article 92 for one specification of being derelict in your performance of duty and one specification for failure to obey a lawful order. Your punishment included reduction to the paygrade of E-4, two months forfeiture of \$345 pay per month, and 45 days' restriction and extra duty. However, the entirety of your punishment was suspended for a period of six months, and you served the duration of that suspension without further incident.

On 30 August 1979, you received a second NJP, again for violations of Articles 86 and 87 due to a period of UA during which you missed your ship's movement. You were reduced to the paygrade of E-4 and required to forfeit \$150 pay, without suspension.

On 26 March 1980, you were then subject to third NJP for violation under Article 86 due to failure to go to your appointed place of duty. You were again subject to reduction in paygrade in addition to 15 days of restriction.

After completing your period of restriction, you commenced multiple periods of UAs. Initially, you returned from a deserter status on 16 June 1980 and were placed into pre-trial restriction (PTR). Records document your continued drug abuse, stating that you were using marijuana, amphetamines, heroin, LSD, PCP, cocaine, and sodium pentothal, more commonly associated with use as anesthesia.

You absented yourself from PTR, on 10 July 1980, but eventually returned to military custody on 28 October 1980; at which time you were again placed into PTR in lieu of arrest. However, you again absented yourself from PTR, on 14 November 1980, and were again declared a deserter. Upon your brief return to military, on 21 November 1980, you were initially awaiting transfer to your unit for disposition of the outstanding charges against you, which included offenses under Articles 85, for two counts of desertion, in addition to offenses under Articles 86, 87, and 92. However, you failed to wait for the transfer to return to your unit, again absented yourself, and did not surrender to military authority until 3 December 1980, after which you were officially placed into pre-trial confinement to prevent you from further absenting yourself.

On 9 March 1981, you were tried and convicted by Special Court-Martial (SPCM) for violations of the UCMJ, to include three specifications under Article 86, for periods of UA from 15 May 1980 through 16 June 1980, from 10 July 1980 through 28 October 1980, and from 14 November until 3 December 1980, Article 87 for missing your ship's movement, and Article 92 for possession of a controlled substance. Your sentence included reduction to the lowest paygrade of E-1, six months confinement at hard labor with concurrent forfeitures of pay, and a Bad Conduct Discharge (BCD). Three months of your confinement was suspended by the Convening Authority in his approval of the findings and sentence.

While confined, you were offered drug abuse treatment but declined. Your petition for review by the U.S. Court of Military Appeals was denied, and the findings and sentence of your SPCM conviction were affirmed following completion of Article 67 review. As a result, your BCD was ordered executed, and you were discharged accordingly on 21 December 1984.

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 punitive discharge and your contentions that the misconduct of your first two enlistments was minor and did not impact your overall quality of service, notwithstanding your BCD during your final period of service. Additionally, you contend that you began to experience negative mental health effects from your time aboard the ██████████, you began to have marital problems in 1980 due to deployment schedules, your performance began to decline as a result and, although purport to have asked your chain of command for help, you assert that you were consistently ignored. You further contend that your use of drugs and alcohol was self-medicating “to escape,” you never received proper treatment for your mental health issues or resulting drug abuse, and the Navy failed to properly diagnose and address your mental health issues during your service. Additionally, you contend that after your divorce, due to the severity of issues with your spouse, you obtained full custody of your sons, you lived life for your children and used your veteran education benefits to obtain the education and training necessary to support them through maintaining gainful employment in spite of your BCD, and you have significant health concerns in the 40 years since your discharge, to include multiple heart attacks and other conditions for which you are being treated by the VA for health. You further identify additional health concerns of post-traumatic stress disorder (PTSD), a thyroid condition, and heart arrhythmia requiring a defibrillator implant. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

In this regard to your contention that your misconduct during your first two enlistments was minimal, the Board noted that you received Honorable discharges for your first two periods of service. Further, since your request for an upgrade is specific to the characterization of your final period of service, the Board’s review focused on the misconduct which occurred during that period and resulted in your punitive discharge.

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 found that your conduct showed a complete disregard for military authority and regulations. Furthermore, the Board considered you’re your misconduct included extensive drug abuse. The Board determined that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. The Board was not persuaded by your arguments that the Navy failed to properly treat your drug abuse and noted that you refused treatment. Further, the Board observed that you did not submit any evidence in support of your contended medical or mental health diagnoses to identify whether any of those are service connected or might bear any nexus to your underlying misconduct. Additionally, although you submitted an employment résumé and a copy of a court order regarding your custody of your children, the Board noted that you did not submit any other substantiating documentation of your contended post-discharge character or accomplishments, such a letters of support from former or current employers, from your children attesting to the situations which impacted their being in your custody and your resulting dedication to caring for them, or from members within your community identifying your larger contribution thereto.

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 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 is attached 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,

8/9/2024

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Executive Director

Signed by: █