



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. 1415-24
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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 29 April 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, 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 Navy and began a period of active duty on 7 February 1985. On 3 November 1988, you were convicted by special court martial (SPCM) for larceny and two specifications of wrongful appropriation. You were sentenced to reduction to the inferior grade of E-3 and forfeiture of pay in the amount of \$150.00 for a period of six months. Consequently, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to commission of a serious offense. Subsequently, you decided to waive your procedural rights and your commanding officer recommended and Other Than Honorable (OTH) discharge characterization of service by reason of misconduct due to commission of a serious offense. The separation authority approved the recommendation and you were so discharged on 1 February 1989.

Post discharge, you applied to the Naval Discharge Review Board (NDRB) for relief. On 13 March 1991, the NDRB denied your request after concluding your discharge was proper as issued.

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: (a) your military service was worth than the \$72.00 of scrap brass you were accused of stealing from a shipyard civilian dumpster, (b) you were taken to court martial and paid your debt, (c) you were separated from your command in retribution for not reenlisting. For purposes of clemency and equity consideration, the Board noted you did provide one character letter of support and the █
█ Newsletter.

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 the likely negative impact it had on the good order and discipline of your unit. Finally, the Board noted you provided no evidence, other than your statement, that you were prosecuted and wrongfully convicted by a SPCM as retaliation for not reenlisting. Therefore, the Board was not persuaded by your arguments and found that you were properly convicted and administratively separated for commission of a serious offense.

As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. 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 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,

5/17/2024

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