



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

█  
Docket No. 1471-24

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 8 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, 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 11 May 1975. Between 18 October 1976 to 18 November 1976, you had two periods of unauthorized absence (UA) totaling 26 days and resulting in nonjudicial punishment (NJP) on 30 November 1976. On 31 January 1978, you received marks of 2.8 in military appearance due to personal grooming not consistent with Navy standards. Subsequently, you were counseled in this area of shortcomings. Between 19 July 1978 to 1 August 1978, you had a period of UA resulting on your second NJP on 19 August 1978.

On 14 December 1978, you commenced another period of UA that ended on 18 December 1978. On 4 January 1979, you began a fifth period of UA which lasted 160 days. On 31 January 1979, you received marks of 2.0 in professional performance, 1.0 in military behavior, 2.6 in military appearance, and 2.8 in adaptability. Consequently, you were referred for trial by special court martial.

Between 30 July 1979 to 16 August 1979, you had two periods of UA totaling 14 days and resulting in your apprehension by civil authorities. On 16 August 1979, you were charged with grand theft auto and placed on civil confinement. Further, you were charged with robbery using force and violence. On 12 May 1980, you were found guilty for your civil offenses and sentenced to confinement for five-years (suspended), probation for three-years, and restitution.

Between 23 May 1980 to 24 February 1981, you had four periods of UA totaling 236 days. On 24 March 1981, you were charged with nine periods of UA and one instance of disobeying a lawful order. On 1 April 1981, you request an Other Than Honorable (OTH) discharge characterization of service in lieu of trial by court martial. The separation authority approved your request and, on 17 April 1981, 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 for a discharge upgrade and contentions that: (a) you were shot on your left knee while serving and were taken to █, █ for medical care, (b) your health has gotten worse and it is important for you to be buried at a national cemetery, (c) your left knee injury has led you to suffer from arthritis and a recent stroke, (d) you have gained more respect now and are more mature than in your younger days in service. Additionally, the Board noted you checked the "PTSD" box on your application but chose not to respond to the Board's request for supporting evidence of your claim. For 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, civil conviction, and request to be discharged in lieu of trial by court martial, 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. The Board also noted that the misconduct that led to your request to be discharged in lieu of trial by court-martial was substantial and, more likely than not, would have resulted in a punitive discharge and extensive punishment at a court-martial. Therefore, the Board determined that you already received a large measure of clemency when the convening authority agreed to administratively separate you in lieu of trial by court-martial; thereby sparing you the stigma of a court-martial conviction and likely punitive discharge. Further, the Board considered the likely discrediting effect your civil conviction had on the Navy. Finally, the Board noted you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct.

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. 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 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,

7/24/2024

