



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

█
Docket No. 2053-24
Ref: Signature Date

█
█
█

Dear █

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 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 1 May 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).

You entered active duty with the Navy, on 7 September 1979, after you were granted a waiver for pre-service drug use after failing to disclose your drug use when you enlisted. On 8 June 1981, you received non-judicial punishment (NJP) for wrongfully communicating a threat, disorderly conduct, failure to obey a lawful order, and using disrespectful language. On 13 November 1981, you received NJP for damaging government property. On 18 January 1982, you received NJP for violating a written regulation. On 26 January 1982, you were formerly counseled on your frequent involvement with military authorities. On 1 April 1982 and 6 August 1982, you received NJP for unauthorized absence (UA), disrespecting a commissioned officer, disobeying a lawful order, and drunk and disorderly conduct.

Consequently, you were notified of pending administrative separation action by reason of frequent involvement with military authorities. After electing to waive your rights, your commanding officer (CO) forwarded your package to the separation authority (SA)

recommending your discharge by reason of misconduct due to frequent involvement with military authorities with an Other Than Honorable (OTH) characterization of service. The SA approved the CO's recommendation and, on 15 October 1982, 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 contentions that you need Department of Veterans Affairs (VA) benefits, you were young and made bad decisions due to consuming alcohol, you were told you would receive a General (Under Honorable Conditions) discharge, and you have been sober for 27 years, became a supervisor, and a productive member in the community. For purposes of clemency and equity consideration, the Board noted you provide a personal statement and advocacy letters.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your NJPs, outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative effect it had on the good order and discipline of your unit. Further, the Board also noted you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct. Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. Finally, the Board noted that there is no evidence in your record, other than your personal statement, to support your contention of being told you would receive a General (Under Honorable Conditions) discharge. Therefore, the Board determined the presumption of regularity applies in your case.

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 provided in mitigation and commends you for your post-discharge accomplishments, 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 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, _____

5/17/2024

