



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. 2324-24
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 6 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, 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).

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Navy and began a period of active duty on 25 February 1985. On 19 March 1986, you received nonjudicial punishment (NJP) for breach of peace. On the same date, you were counseled concerning the aforementioned UCMJ violation and advised that failure to take corrective action could result in administrative separation. On 15 October 1986, you received a second NJP for two instances of unauthorized absence (UA) from appointed place of duty. On 9 June 1988, you began a period of UA, lasting 7 hours, which resulted in your third NJP on 10 June 1988. Consequently, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to pattern of misconduct, at which point, you decided to waive your procedural rights. Your commanding officer recommended an Other Than Honorable

(OTH) discharge characterization of service by reason of misconduct due to pattern of misconduct. The separation authority approved the recommendation and, on 3 August 1988, 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) post discharge, you were able to graduate from college with bachelors in mechanical engineering, got married, and have three kids, (b) you have been supporting your family and yourself with a construction business, (c) you have been a law abiding citizen who votes and coaches little league, (d) you have come a long way from the troubled, angry, and misguided youth that it is described in your naval records, (e) you were a young stubborn angry young man who was unable to see the errors on your ways. 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, 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. The Board noted that you were given the opportunity to correct your deficiencies but continued to commit misconduct. Further, the Board considered the seriousness of your misconduct and the likely negative impact it had on the good order and discipline of your unit. Therefore, the Board disagreed with your assessment that the positive aspects of your service outweighed the negative aspects.

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,

5/30/2024

