

## **DEPARTMENT OF THE NAVY**

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

> Docket No. 2726-24 Ref: Signature Date

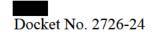
## Dear Petitioner:

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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 3 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 this 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).

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 US Navy and commenced a period of active duty on 30 January 1978. Between 6 September 1978 and 26 August 1980 you received non-judicial punishment (NJP) on eight occasions for eight specifications of unauthorized absence (UA) from your appointed place of duty, three specifications of disobeying a lawful order, breaking restriction, resisting apprehensions, and provoking gestures. You were also counseled, on 26 August 1980, and warned that further misconduct could result in the initiation of administrative separation proceedings. On 18 December 1980, you were convicted by a special court martial (SPCM) for attempting to steal property of the US Government with a value of \$682.50, willfully damage military property of a value of \$246.42, and unlawfully entering US Government property with intent to commit larceny. You were sentenced to a Bad Conduct Discharge (BCD), confinement, and forfeiture of pay. On 27 March 1981, you were counseled, and you were notified further misconduct could result in the



initiation of administrative separation proceedings. You pleaded guilty to a civil charge for expired State tags, expired inspection sticker, having no registration, and reckless driving on 1 April 1981. You received your ninth NJP on 7 April 1981 for UA. Subsequently, you receive another retention counseling, and notified further misconduct may result in the initiation of administrative separation proceedings. On 11 September 1981, you received your second SPCM conviction for UA. You were sentenced a BCD, confinement, and reduction in rank. On 10 August 1982, you received your last NJP for breaking restriction, UA, and resisting apprehension. Ultimately, on 10 November 1982, you were discharged with a BCD by reason of court martial conviction.

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 characterization of service and your contentions that you were young, got in too much trouble, and you are now mature. For purposes of clemency and equity consideration, the Board noted you did not provide 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 and SPCMs, 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. Further, the Board determined you already received a large measure of clemency when you were retained after your first SPCM conviction and BCD. The Board noted you were given multiple opportunities to correct your conduct deficiencies and 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 a BCD. 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 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.

