



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. 3472-24
Ref: Signature Date

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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 reconsideration application on 7 June 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 enlisted in the U.S. Navy and began a period of active duty service on 19 November 1985. Your enlistment physical examination, on 5 November 1985, and self-reported medical history both noted no psychological or neurological issues, symptoms, history, or counseling. Following your disclosure of pre-service marijuana usage, on 28 January 1986, you received a waiver for submarine duty.

On 8 September 1988, you received non-judicial punishment (NJP) for both wrongful appropriation of government property, and an assault when you struck a shipmate on the head with a glass liquor bottle. On 14 October 1988, the General Court-Martial Convening Authority denied your appeal.

On 12 September 1988, your command notified you of administrative separation proceedings by

reason of misconduct due to the commission of a serious offense, as evidenced by your NJP. On 15 September 1988, you consulted with counsel and you elected in writing to request a hearing before an administrative separation board (Adsep Board).

On 8 December 1988, an Adsep Board convened in your case. At the Adsep Board, you were represented by counsel. Following the presentation of evidence and witness testimony, the Adsep Board members determined by unanimous vote that the preponderance of the evidence presented substantiated your misconduct as charged. Subsequent to the misconduct finding, the Adsep Board members unanimously recommended that you be separated with an "under Other Than Honorable conditions" (OTH) characterization of service, but recommended to the Separation Authority (SA) that such discharge be suspended.

Your Commanding Officer (CO) concurred with the Adsep Board's findings and recommended characterization of service, but disagreed with the discharge suspension recommendation. In the interim, on 27 March 1989, you commenced an unauthorized absence (UA) that terminated after ten (10) days on 6 April 1989. On 9 April 1989, the SA approved and directed your OTH separation for misconduct.

Prior to your pending discharge, on 21 April 1989, you were convicted at a Summary Court-Martial (SCM) for: (a) two separate specifications of the wrongful use/possession of a false military identification card (ID), (b) the wrongful possession of more than one (1) military ID card, and (c) breaking restriction. You were sentenced to confinement at hard labor for twenty (20) days, forfeitures of pay, and a reduction in rank to Seaman Apprentice (E-2). The Convening Authority approved the SCM findings and sentence.

Your separation physical examination, on 5 May 1989, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms. Ultimately, on 10 May 1989, you were separated from the Navy for misconduct with an OTH discharge characterization and assigned an RE-4 reentry code. On 11 May 1989, the SA revoked your security clearance for cause.

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) at the time of your OTH discharge you were young and did just did not like the way you were removed from the submarine and given other duties, and (b) you did not realize the impact your separation would have later in life. For purposes of clemency and equity consideration, the Board considered the entirety of the evidence you provided in support of your application, which consisted solely of the information you placed on your DD Form 149 without submitting any additional documentation regarding any exemplary post-service conduct, or any other matters in extenuation or mitigation.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. The Board did not believe that your record was otherwise so meritorious to deserve an upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record and, in this case, an OTH discharge characterization and no higher was appropriate. The Board determined

that characterization under OTH conditions is generally warranted for misconduct and is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor. The Board determined that the record clearly reflected your misconduct was intentional and willful and indicated you were unfit for further service. Moreover, the Board noted that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions.

As a result, the Board determined that there was no impropriety or inequity in your discharge and concluded that your serious misconduct and disregard for good order in discipline clearly merited your discharge. 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.

Sincerely,

6/16/2024

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