



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. 4205-24
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your father's (service member (SM)) naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of SM's 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 14 August 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 father's 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).

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

SM enlisted in the U.S. Navy and began a period of active duty on 20 August 1954. SM received non-judicial punishment (NJP), on 31 January 1955, for shirking duty. On 24 August 1955, SM received his second NJP for unauthorized absence (UA). Then, on 2 December 1955, SM received his third NJP, for failure to go to his appointed place of duty and being in an off limits location.

On 20 April 1956, SM was found guilty at special court-martial (SPCM) for UA, committing an assault by pointing a blank .22 caliber pistol at a person, and wrongfully use provoking words to an Air Force policeman. SM was sentenced to confinement and forfeiture of pay. SM received his fourth NJP, on 21 May 1956, for being absent from his organization without proper authority.

SM commenced a period of UA on 16 June 1956 and remained absent until he was apprehended on 18 June 1956. On 20 June 1956, SM received his fifth NJP for the period of UA. On 26 June 1956, SM was found guilty at his second SPCM for two specifications of three days UA. He was sentence to confinement and forfeiture of pay. On 6 August 1956, SM received his sixth NJP for UA. On 21 March 1957, he was arrested by civilian authorities for rape and larceny. Ultimately, 10 April 1957, he was found guilty in civilian court for both charges and sentenced to confinement.

Unfortunately, documents pertinent to SM's administrative separation are not in his official military personnel file. Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. SM's Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that he was separated from the Navy on 5 July 1957 with an Other Than Honorable (OTH) characterization of service, narrative reason for separation "Misconduct," and separation code "263." Separation code 263 is consistent with a discharged based on civil conviction.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in accordance with the Wilkie Memo. These included, but were not limited to, your desire for a discharge upgrade and a change to SM's separation reason and code. You contend that if SM had been asked, he would have disclosed his bedwetting (enuresis). You allege that SM found himself at the receiving end of experiences that were humiliating and ultimately bringing into question fair and impartial treatment as a human being. You imply that SM was discharged and assigned an OTH discharge due to his enuresis condition. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that SM's misconduct, as evidenced by his NJPs, SPCMs, and civilian conviction for rape and larceny, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of SM's misconduct and found that his conduct showed a complete disregard for military authority and regulations. Further, the Board considered the likely discrediting effect his civil conviction had on the Navy. Furthermore, the Board observed that SM was given multiple opportunities to correct his conduct deficiencies but chose to continue to commit misconduct. Finally, the Board concluded there is no evidence SM was mistreated due to an enuresis condition or that the condition formed the basis for his discharge or characterization of service. As chronicled above, SM's record of misconduct was extensive and the Board determined it supports his administrative separation for civil conviction.

