



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

█
Docket No. 4266-24
Ref: Signature Date

█
█
█

Dear █

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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 12 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).

During your enlistment processing you were granted an enlistment waiver for charges of damage to property, accessory to crime, and trespassing. You enlisted in the Navy Reserve and commenced a period of active duty on 25 September 1989. On 25 October 1990, you received nonjudicial punishment (NJP) for a period of unauthorized absence (UA) that lasted 10 days. On 12 February 1991, you received NJP for two additional periods of UA totaling 20 days. On 15 April 1991, you were convicted by civil authorities of intimidation of physical harm, a class three felony, and ordered to conduct 160 hours of community service, pay court costs and \$482.33 in restitution, and placed on two years of probation.

Consequently, you were notified of your pending administrative processing by reason of pattern of misconduct and civilian conviction, at which time you elected your rights to consult with counsel and to have your case heard before and administrative discharge board. On 6 June 1991, an administrative discharge board unanimously found you committed misconduct and recommended you be discharged with an Other Than Honorable (OTH) characterization of service. Your commanding officer also recommended you be discharged with an OTH

characteristic adding, “[h]e has been counseled both formally and informally about his repeated military infractions however, he remains unmotivated to improve his military performance.” The separation authority accepted the recommendation and, on 15 August 1991, 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: (1) the whole process was unfair, (2) you felt helpless, and (3) you were unaware that you could request a discharge upgrade. For purposes of clemency and equity consideration, the Board noted you did not provide post-service documentation or character 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 civilian conviction, 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 considered the likely discrediting nature of your civil conviction on the Navy. Additionally, the Board noted that you provided no evidence, other than your statement, to substantiate your contention that you were treated unfairly. Finally, as expressed by your commanding officer, you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct; which ultimately led to your discharge.

As a result, the Board concluded your conduct constituted a significant departure of that expected of a service member and continues to warrant an OTH. 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 is attached 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,

7/1/2024

