



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. 4682-24
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 21 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 17 November 1994. Your enlistment physical examination, on 10 November 1994, and self-reported medical history both noted no psychological or neurological issues, symptoms, history, or counseling. You denied any alcohol abuse on your medical history. On 10 March 1995, you reported for duty on board the █ in █.

On 11 January 1996, you received non-judicial punishment (NJP) for wrongfully altering an Armed Forces Identification Card. You did not appeal your NJP. On 15 February 1996, your command issued you a "Page 13" retention warning (Page 13) documenting your NJP. The Page 13 expressly advised you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative separation.

On 17 May 1996, you received NJP for drunk and disorderly conduct. You did not appeal your NJP.

On 20 August 1996, you were transferred to the ██████████ at ██████████. ██████████ staff noted that your drinking history was not significant enough to diagnose you as being alcohol dependent, and subsequently recommended your return to duty and to attend Level II treatment for alcohol abuse. On 27 August 1996, you were transferred back to your ship due to being a treatment mis referral.

On 4 May 1997, you commenced an unauthorized absence that terminated on 6 May 1997. On 14 June 1997, you received NJP for two separate UA specifications. You did not appeal your NJP. On the same day, your command issued you a Page 13 documenting your UA. The Page 13 expressly advised you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative separation.

On 24 April 1998, you were convicted at a Summary Court-Martial (SCM) for a breach of the peach and for wrongfully using provoking words. You were sentenced to a reduction in rank to E-3, forfeitures of pay, and restriction for sixty (60) days. On 1 May 1998, the Convening Authority approved the SCM sentence.

On 6 July 1998, your command notified you of administrative separation proceedings by reason of misconduct due to the commission of a serious offense and pattern of misconduct. On 14 July 1998, you waived your rights to consult with counsel and to elected a hearing before an administrative separation board.

In the interim, on 29 July 1998, you commenced a period of UA that terminated on 2 August 1998. Your separation physical examination, on 24 August 1998, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms. Ultimately, on 28 August 1998, you were separated from the Navy for misconduct with an under Other Than Honorable conditions (OTH) discharge characterization and were assigned an RE-4 reentry code.

On 17 April 2000, the Naval Discharge Review Board denied your initial discharge upgrade application. On 16 March 2005, this Board denied your petition based on the statute of limitations (SoL) and the fact that you did not provide a reason for waiving the SoL. On 28 February 2024, this Board notified you that the Board would reconsider its decision upon the submission of new and material evidence from you.

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) there is no time limit on justice and what is right, (b) you should have been medically discharged two years prior to your actual discharge for failing completion of Level II and Level III alcohol rehabilitation treatment, but wasn't because the Navy doesn't follow its own rules when it isn't convenient for them and wanted to continue to work you like a whipped horse, (c) two years later after your chain of command failed you, while you were underway after numerous threats

against your life and was forced to defend yourself, you were court-martialed, yet retained by the court-martial judge who was empathetic to your plight, (d) the commanding officer (CO) at the time wasn't happy with your court-martial sentence and abused his authority to have you discharged just weeks before the end of your active enlistment obligation, (e) you were kept in the service an additional two years despite additional alcohol-related incidents, and then were administratively separated for an action that you had already completed judgement and punishment at court-martial where you were retained in service, and (f) the CO was outraged that the court martial judge retained you, and then proceeded to step outside of his authority to administratively discharge you with an OTH for the same offenses you had been judged, sentenced and completed your sentence for at the court-martial. Additionally, the Board noted you checked the "Other Mental Health" box on your application but chose not to provide supporting evidence of your claim. For purposes of clemency and equity consideration, the Board considered the entirety of the evidence you provided in support of your application.

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 and restoration of rank. 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.

The Board determined that your administrative separation processing was legally and factually sufficient. The Board determined, contrary to your contentions, that your CO did not abuse his authority by administratively separating you following your SCM. The Board noted that a SCM is the lowest level of court-martial, and that a punitive discharge is not a permitted punishment at a SCM. Accordingly, it was entirely appropriate for your CO to initiate administrative separation (Adsep) proceedings following your SCM. The Board noted that it is standard, routine practice to begin Adsep proceedings following SCMs and/or NJPs for serious offenses. The Board also noted that you were never diagnosed on active duty as being alcohol dependent, and that you were only identified as being an alcohol abuser.

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,

6/26/2024

