



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

█  
Docket No. 4721-24

Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 15 July 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).

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 on the evidence of record.

You enlisted in the Navy and commenced a period of active duty on 20 February 1981. On 8 June 1981, you received nonjudicial punishment (NJP) for disorderly conduct by causing a disturbance. Additionally, you were issued administrative remarks documenting these infractions, retaining you in the Navy, and advising you that further violations could result in an administrative separation under Other Than Honorable (OTH) conditions. Subsequently, you received seven additional NJPs for failure to obey a lawful order, failure to go to your appointed place of duty, disrespect in language to a superior petty officer, unauthorized absences (UAs), possessing one hand rolled cigarette of marijuana, and possessing paraphernalia. Due to your

marijuana possession, you were given a drug evaluation and found not psychologically or physically dependent. In addition to your military misconduct, on 24 May 1983, you were convicted of two counts of hit and run by the City of ██████████ Criminal Court and sentenced to 90 days in jail (suspended for good behavior), fined \$350.00 to include court costs, ordered to pay the bicyclist's medical bills, and your operator's license was suspended for 12 months.

Consequently, you were notified of your pending administrative processing by reason of misconduct-pattern of misconduct (POM), at which time you elected your right to consult with counsel and waived your right to have your case heard before an administrative discharge board. Your commanding officer recommended you be discharged with an OTH adding, "[Petitioner] reported on board February 1982. Since that time his performance has been marginal at best. He has not shown the drive or determination necessary to become a useful crewmember. Although counseled both formally and informally at every level in the chain of command. [Petitioner] has shown no desire to alter his attitude or improve on his past performance. He shows no tendency towards credible service and further counseling would be fruitless. [Petitioner's] aberrant behavior is a detriment to good order and discipline and he has become an administrative burden to this command." The separation authority accepted the recommendation and, on 29 July 1983, 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 your discharge was inappropriate and improper because you were falsely accused of disrespecting an officer when you were following the norms set by the Navy, and you were told by your Captain that your actions were not disrespectful. For purposes of clemency and equity consideration, the Board noted you provided a copy of your DD Form 214.

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 civil 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. Additionally, the Board noted that you were given several opportunities to correct your conduct deficiencies but chose to continue to commit misconduct. Further, the Board considered the likely discrediting nature of your civilian conviction on the Navy. Finally, the Board noted you provided no evidence, other than your statement, to substantiate your contentions that you were somehow treated unfairly. However, the Board considered the fact you committed substantial misconduct that appears to be completely unrelated to your interactions with the Ensign; whom you allege was accusing you unjustly. Therefore, the Board was not persuaded by your arguments.

As a result, the Board concluded your conduct constituted a significant departure from 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,

7/31/2024

