



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. 4748-24

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 application on 12 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 based on the evidence of record.

You enlisted in the U.S. Navy and began a period of active duty service on 26 June 1989. Your enlistment physical examination, on 18 April 1989, and self-reported medical history both noted no psychological or neurological issues, symptoms, history, or counseling. You expressly denied ever being a sleepwalker on your medical history. On 11 December 1989, you reported for duty on board the █ in █.

On 20 April 1990, you received non-judicial punishment (NJP) for an assault of a fellow Sailor. You did not appeal your NJP. On the same day, your command issued you a "Page 13" warning (Page 13) documenting your NJP. The Page 13 advised you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for an administrative separation. You did not submit a Page 13 rebuttal statement.

On 9 October 1990, you received NJP for six (6) separate unauthorized absences (UA), insubordinate conduct, and for wrongfully communicating a threat to a superior non-commissioned officer. You did not appeal your NJP.

Consequently, your command notified you of administrative separation proceedings by reason of misconduct due to the commission of a serious offense and a pattern of misconduct. You waived your rights to consult with counsel and to request a hearing before an administrative separation board.

In the interim, you received NJP on 5 November 1990 for: (a) being UA from four (4) separate restricted musters, (b) being UA from two (2) separate extra duty musters, (c) insubordinate conduct, and (d) dereliction in the performance of duties. You did not appeal your NJP.

Your separation physical examination noted no neurologic issues, and you were found qualified for separation. You represented on your medical history form that your health was "good," and you checked the box "yes" to being a sleepwalker. Ultimately, on 5 December 1990, you were separated from the Navy for misconduct with an Other Than Honorable conditions (OTH) discharge characterization and were assigned an RE-4 reentry code.

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 change to your basis for separation to reflect a Secretarial Authority discharge. You contend that: (a) your absences from your appointed place of duty, which were the basis of your adverse separation and resulting OTH characterization of service, was caused by sleepwalking episodes, (b) your medical condition therefor significantly mitigates the alleged misconduct for which you were separated, (c) given the mitigation medical evidence, the OTH characterization of service was and remains too harsh and simply unwarranted, (d) you should not have been separated for misconduct, but rather for a medical condition not a disability, as the medical providers recommended in your 2 April 1990 entry, (e) stress can cause the sleepwalking condition to flare up, (f) your diagnosed sleepwalking condition either excuses the alleged misconduct entirely or at least significantly mitigates it, and (g) you should have never been adversely separated based on misconduct, but rather separated for a disqualifying medical condition. 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. First, the Board was not persuaded by your contention that the misconduct underlying your discharge was caused by sleepwalking. Even with liberally consideration all of the evidence, the Board concluded that there was absolutely no nexus between your purported

sleepwalking and misconduct. The Board noted that, on 2 April 1990, a Navy Medical Officer's (MO) diagnostic impressions included both somnambulism, and a personality disorder not otherwise specified with borderline and avoidant features. The MO determined you were psychiatrically fit for full duty. Notwithstanding, the MO recommended that you were unsuitable for safety reasons if your reported sleepwalking was true, and also determined you were unsuitable by reason of your diagnosed personality disorder. However, the MO noted that certain documentation was necessary per the MILPERSMAN to substantiate and pursue a somnambulism separation, and the MO also noted that if your documented performance was unsatisfactory, the command could consider a discharge for personality disorder. Therefore, absent medical evidence that somnambulism caused your various incidents of misconduct, the Board determined your contention lacks merit.

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 repeat 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. Lastly, the Board determined that your administrative separation processing was legally and factually sufficient. The Board determined that it was well within the command's discretion to process you solely for misconduct and not for any other reasons.

The Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average calculated from your available performance evaluations during your enlistment was an abysmal 1.0 in conduct. Navy regulations in place at the time of your discharge recommended a minimum trait average of 3.0 in conduct (proper military behavior) for a fully honorable characterization of service. The Board determined that your misconduct was not minor in nature. The Board concluded that your conduct marks during your active duty career were a direct result of your cumulative misconduct, all of which further justified your OTH characterization.

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. While the Board carefully considered the evidence you provided in mitigation, 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. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. 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,

7/24/2024

