



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. 4937-24
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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 17 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, 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 Navy and began a period of active duty on 10 November 1985. Prior to coming on active duty, you admitted preservice use of a controlled substance-marijuana. On 13 May 1987, you received nonjudicial punishment (NJP) for two instances of wrongful use of provoking words, four instances of assault on another service member and a civilian employee, and drunk and disorderly conduct. Consequently, you were counseled concerning your poor military performance and advised that failure to take corrective action could result in administrative separation.

On 31 July 1987, you received a second NJP for failure to obey a lawful general regulation and drunkenness-incapacitation for performance of duties. On 11 December 1987, you were placed on the Command Antabuse Program due to your involvement in substance abuse.

On 3 May 1988, you received a third NJP for disrespect towards a superior commissioned officer and two instances of drunk and disorderly conduct. Consequently, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to commission of a serious offense. You decided to waive your procedural rights and your commanding officer recommended an Other Than Honorable (OTH) discharge characterization. The separation authority approved the recommendation and you were so discharged on 7 June 1989.

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 you were not given a second chance to prove yourself as a fit Sailor and you desire veterans' status. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy 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, 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 considered the likely negative impact it had on the good order and discipline of your unit. Further, contrary to your contention that you were not given a chance to prove yourself, the Board note you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities.

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 characterization. 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 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,

7/3/2024

