



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. 4989-24
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 29 May 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).

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 Navy and began a period of active duty on 1 September 1978. On 30 June 1980, you were honorably discharged by reason of immediate reenlistment and began a second period of active duty. Between 12 August 1981 to 25 August 1981, you had two periods of unauthorized absence (UA) totaling 11 days. On 9 September 1981, you received nonjudicial punishment (NJP) for two instances of UA and failure to put forth sufficient effort to complete the BE&E course instruction. Between 15 September 1981 to 25 January 1982, you had two

periods of UA totaling 131 days. On 26 April 1982, you were convicted by special court martial (SPCM) for two instances of UA and disobeying a lawful order from a superior officer. You were found guilty and sentenced to reduction in rank and a period of restrictions.

Between 22 June 1982 to 12 July 1982, you began two periods of UA totaling nine days. On 14 July 1982, you received a second NJP for two instances of UA and missing ship movement. Consequently, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to frequent involvement. You decided to waive your procedural rights and your commanding officer recommended an Other Than Honorable (OTH) discharge characterization of service by reason of misconduct due to frequent involvement. The separation authority approved the recommendation, and, on 6 August 1982, you were so discharged.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for relief. On 15 September 1984, the NDRB denied your request after concluding your discharge was proper as issued.

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) you are requesting an upgrade with the intent to apply for Medicare for a lumbar injury you sustained while serving on board the █, (b) the Navy is not releasing your medical records so you can obtain medical assistance. 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 and SPCM, 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. 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.

The Board noted that you received an Honorable discharge from your first enlistment period and may be eligible for Department of Veterans Affairs (VA) medical assistance for your medical condition. The Board recommends you contact your nearest VA office to determine your eligibility for care.

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,

6/25/2024

