



**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. 5498-24  
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 16 August 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 5 October 1988. Your pre-enlistment physical examination, on 6 January 1988, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms. You disclosed multiple pre-service alcohol-related offenses on your enlistment application, but you did not disclose any symptoms, treatment history, or diagnosis of sleep apnea on your self-reported medical history.

On 1 August 1989, your command issued you a "Page 13" counseling warning (Page 13) documenting certain deficiencies in your performance and/or conduct to include poor work performance and your inability to follow Navy regulations and order from your superiors. The

Page 13 advised you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge.

On 10 August 1989, you commenced an unauthorized absence (UA). While in a UA status, you missed the movement of the █. Your UA terminated on 21 August 1989.

On 23 August 1989, you were convicted at a Summary Court-Martial (SCM) for: (a) missing movement by design, your 11-day UA, resisting arrest, and for assaulting a superior commissioned officer. You were sentenced to a reduction in rank to the lowest enlisted paygrade (E-1), forfeitures of pay, and confinement for thirty (30) days. On 1 September 1989, the Convening Authority approved the SCM sentence.

On 13 September 1989, your command notified you of administrative separation proceedings by reason of misconduct due to commission of a serious offense. On 18 September 1989, you consulted with counsel and expressly waived in writing your rights to submit rebuttal statements and to request an administrative separation board. On 1 October 1989, your commanding officer recommended to the separation authority that you receive an under Other Than Honorable conditions (OTH) discharge characterization. Ultimately, on 16 October 1989, you were separated from the Navy for misconduct with an OTH characterization of service 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 reason for separation. In your application: (a) you apologize to the Board and to the United States Navy as a whole, (b) you understand that Sailors are held to a higher standard of personal conduct and that your actions fell below this standard, (c) you acknowledge the way in which you handled yourself was incorrect, but you would never have committed your infractions if your chain of command had correctly provided you with the medical attention necessary to correctly diagnose your sleep apnea and provide the appropriate treatment, (d) allege your poor judgement was a response to physical exhaustion brought on by undiagnosed sleep apnea and weeks of twelve-hour workdays with rare weekend leaves, (e) contend your failure to report for duty and lapses in judgment resisting arrest were caused by the medical effects of sleep apnea and exhaustion combined with being physically dragged out of bed suddenly by a Naval officer, and (f) argue that while you were provided assistance in connection with your Page 13 issued on 1 August 1989, such assistance did not contemplate the undiagnosed condition of sleep apnea and the effects such exhaustion would have on your fitness to perform your duties to the best of your abilities. For purposes of clemency and equity consideration, the Board considered the entirety of the evidence you provided in support of your application, including your personal statement.

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 as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. 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 pattern of 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 concluded there is no evidence in the record that you ever suffered from any sleep apnea on active duty. The Board also unequivocally determined there was no nexus whatsoever between your purported sleep apnea and cumulative misconduct. The Board noted that your separation physical examination on 25 September 1989 and self-reported medical history both noted no sleep apnea, nor any psychiatric or neurologic issues or symptoms. The Board also observed that you expressly stated “No” to ever having (or presently having) any “frequent trouble sleeping,” on your medical history.

As a result, the Board determined that there was no impropriety or inequity in your discharge and concluded that your misconduct and disregard for good order in discipline clearly merited your discharge. While the Board carefully considered the evidence you submitted in mitigation and commends you for your post-discharge good character, 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,

8/23/2024

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