



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

██████████
Docket No. 5590-24
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 28 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).

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 on 19 September 1978. On 7 October 1979, you were found guilty at summary court-martial (SCM) for five specifications of failure to go to your appointed place of duty, four specifications of disobeying a lawful order, dereliction of duty, and having alcohol onboard a naval vessel. You were sentence to restriction, forfeiture of pay and reduction in rank (suspended for six months). On 31 October 1979, you received non-judicial punishment (NJP) for two specifications for failure to go to your appointed place of duty. On 17 December 1979, the commanding officer vacated your suspended punishment from your SCM. You received your second NJP, on 17 December 1979, for eight

specifications of failure to obey a lawful order, failure to go to your appointed place of duty, and six periods of unauthorized absence (UA).

On 10 October 1980, you received your third NJP for failure to obey an order, dereliction of duty by having alcohol onboard a naval vessel, possession of a controlled substance, theft, assault, and resisting lawful apprehension. Then, on 2 March 1981, you received your fourth NJP for two days UA. On 14 April 1981, you received your fifth NJP for possession of marijuana. On 13 November 1981, you were found guilty by a special court-martial (SPCM) for 68 days UA. You were sentenced to confinement and forfeiture of pay.

Consequently, you were notified of administrative separation processing for frequent involvement of discreditable nature with military authorities and drug abuse. After you waived your rights, the Commanding Officer (CO) made his recommendation to the Separation Authority (SA) that you be discharged with an Other Than Honorable (OTH) characterization. Prior to the SA decision, you received your second SCM for two specifications of UA: 35 days and one day. You were sentence to confinement. Ultimately, the SA accepted the recommendation and directed you be discharged for commission of a serious offense. You were so discharged on 25 May 1982.

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 contention that your pattern of misconduct began when you showed up to the ship in Japan, there was no job for you, and you didn't get paid for six months. For purposes of clemency and equity consideration, the Board noted you did not provide any advocacy letters or documentation describing post-service accomplishments but did provide a question and answer transcript.

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, SCMs, 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. Further, the Board noted that you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct. The Board was not persuaded by your testimony regarding the lack of pay upon reporting and observed that your misconduct spanned a period of three years. Further, the Board noted you provided no evidence, other than your own statements, to substantiate your contentions that you were somehow mistreated or treated unfairly.

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. While the Board carefully considered the evidence you submitted in mitigation, even in light of 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,

9/16/2024

