



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

██████████
Docket No. 5842-24

Ref: Signature Date

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████████████████████

Dear ██████████

This is in reference to your application for correction of your father's (Service Member (SM's)) naval record pursuant to Title 10, United States Code, Section 1552. After careful and conscientious consideration of relevant portions of SM's 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 you did not file your application in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 29 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 SM's 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.

SM enlisted in the Navy and commenced a period of active duty on 28 May 1964. On 6 November 1964, SM was found guilty at a special court-martial (SPCM) of an unauthorized absence (UA) totaling 115 days and sentenced to confinement at hard labor for six months, forfeiture of \$50.00 pay per month for six months, and reduction in rank to E-1. Between 30 March 1966 and 27 July 1967, SM received five nonjudicial punishments (NJPs) for infractions including failing to go to his appointed place of duty, UA, failing to obey a lawful order, and misbehavior of a sentinel by leaving his post. In addition, SM received two civil convictions for speeding, contempt of court, and drunken driving. Consequently, SM's commanding officer recommended SM be discharged with an Other Than Honorable (OTH)

characterization of service for frequent involvement of a discreditable nature with civil and military authorities. The separation authority approved the recommendation and, on 22 September 1967, SM was so discharged.

In 2000, you requested replacement medals for SM to the National Personnel Records Center. Your request was denied based on a determination by the National Archives and Record Administration (NARA) that SM was not entitled to replacement medals due to his OTH discharge.

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 to upgrade SM's discharge and be issued any medals he never received. You contend that: (1) SM had an abusive childhood which was traumatic, (2) SM was also traumatized by his time in █ and both contributed to his misconduct, (3) SM subsequently turned to alcohol to ease his trauma and PTSD (Post Traumatic Stress Disorder), (4) at 39-years-old, SM was a homicide cold case victim, (5) upgrading SM's discharge would make him very proud, and (6) you would like to receive a gravestone for SM. Additionally, the Board noted you checked the "PTSD," and "OTHER MENTAL HEALTH," boxes on your application but chose not to respond to the 29 May 2024 letter from the Board requesting evidence in support of your claims. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that SM's misconduct, as evidenced by his SPCM, civil convictions, and NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of SM's misconduct and found that SM's conduct showed a complete disregard for military authority and regulations. Additionally, the Board noted SM was provided an opportunity to correct his conduct deficiencies but chose to continue to commit misconduct. Further, the Board considered the likely discrediting nature of SM's civil conviction on the Navy. Finally, the Board noted you provided no evidence, other than your statement, to substantiate your contentions. Therefore, the Board determined that the evidence of record did not demonstrate that SM was not mentally responsible for his conduct or that he should not be held accountable for his actions.

As a result, the Board concluded SM's conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH. Even in light of the Wilkie Memo and reviewing the record liberally and 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.

Lastly, concerning your request to be issued medals earned but never received by SM, the Board concurred with the NARA determination that SM remains ineligible to receive replacement medals due to his OTH characterization. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

The Board offered its condolences for your loss.

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 is attached 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

