



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. 5846-24
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 1 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 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 Navy and commenced active duty on 19 October 1977. On 24 July 1978, you received non-judicial punishment (NJP) for two specifications of failure to go to your appointed place of duty. On 8 September 1978, you commenced a period of unauthorized absence that ended in your surrender on 2 October 1978. On 21 November 1978, you were found guilty at Summary Court Martial (SCM) of twenty-four days of UA. On 19 December 1978, you commenced a period of UA that ended in your surrender on 1 January 1979. On 3 April 1979, you received NJP for failure to go to your appointed place of duty. On 5 April 1979, you were issued an administrative remarks (Page 13) counseling concerning deficiencies in your performance and/or conduct. You were advised that any further deficiencies in your

performance and/or conduct may result in disciplinary action and in processing for administrative discharge. On 25 September 1979, you were evaluated for drug dependency and determined not dependent.

On 14 April 1980, you commenced a final period of UA, during which time you were declared a deserter, that ended in your surrender on 6 March 1986. Consequently, you were tried by a General Court Martial (GCM). Unfortunately, the documents pertinent to your GCM are not in your official military personnel file (OMPF). Based on the information contained on your Certificate of Release or Discharge from Active Duty (DD Form 214) and Page 13 counseling in your OMPF, you were separated, on 27 January 1988, with a Bad Conduct Discharge (BCD) as a result of a General Court Martial (GCM) conviction.

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 change your discharge characterization of service and your contentions that you were told you would qualify for an Honorable discharge if you had no criminal activity and good employment status, and that you have no criminal record and have worked consistently since discharge. For purposes of clemency and equity consideration, the Board considered your statement and the advocacy letter you provided.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs, SCM, and GCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your repeated misconduct and the likely negative impact your conduct, including your extended UA, had on the good order and discipline of your command. The Board concluded that unexpectedly absenting yourself from your command placed an undue burden on your chain of command and fellow service members, and likely negatively impacted mission accomplishment. Finally, the Board also noted that there is no provision of federal law or in Navy regulations that allows for a discharge to be automatically upgraded after a period of time.

As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant a BCD. While the Board carefully considered the evidence you submitted in mitigation and commends you for your post-discharge rehabilitation, 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,

7/21/2024

