



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. 5878-24
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 11 September 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 began a period of active duty on 7 January 1958. On 8 June 1959, you were convicted by a summary court-martial (SCM) of unauthorized absence (UA). On 9 December 1959, you were convicted by a SCM of wrongfully having in your possession with intent to deceive a certain instrument purporting to be an "Out of Bounds Pass," knowing the same to be false.

On 7 January 1960, you received non-judicial punishment (NJP) for failure to go at the time prescribed to your appointed place of duty. On 14 January 1960, you received NJP for UA. On

10 May 1960, you were convicted by a SCM of UA and three specifications of failure to obey a lawful order. On 12 October 1960, you received NJP for UA. On 9 November 1960, you received NJP for UA. On 28 December 1960, you received NJP for disrespect and failure to turn out at reveille.

On 11 January 1961, you received NJP for disrespect in deportment and failure to obey a lawful order. Consequently, on the same day, you were notified that you were being recommended for administrative discharge from the Navy. You elected your right to consult with counsel and to present your case to an administrative discharge board (ADB). In the meantime, on 8 February 1961, you received NJP for disrespect, failure to obey a lawful order, and destruction of government property. On 15 February 1960, an ADB was convened and found that you committed misconduct and recommended your administrative discharge from the Navy under Other Than Honorable (OTH) conditions. On 7 March 1961, you received your final NJP for dereliction in the performance of duty. Ultimately, the separation authority directed your OTH discharge from the Navy by reason of unfitness and, on 23 March 1961, you were so discharged.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 19 July 1968, based on their determination that 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 to upgrade your discharge character of service and contention that you should have received an Honorable discharge since you were never allowed to defend yourself, your accuser was not present, and the misconduct which formed the basis for your separation occurred approximately five months prior. For purposes of clemency and equity consideration, the Board noted you submitted a personal statement but no supporting documentation describing post-service accomplishments or advocacy letters.

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 and SCMs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded your misconduct showed a complete disregard for military authority and regulations. Further, the Board found that your misconduct was intentional and made you unsuitable for continued naval service. Furthermore, the Board also determined that the evidence of record did not demonstrate that you were not responsible for your conduct or that you should otherwise not be held accountable for your actions. The Board noted that you were provided opportunities to correct your conduct deficiencies during your service; however, you continued to commit additional misconduct. Your conduct not only showed a pattern of misconduct but was sufficiently serious to negatively affect the good order and discipline of your command. Finally, the Board observed the great discrepancy between your description of a single incident of misconduct that supposedly formed the basis for your discharge and your extensive record of misconduct that included eight NJPs and three SCMs. Therefore, the Board was not persuaded by your argument that you were treated unfairly or unjustly discharged.

As a result, the Board determined 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 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,

9/27/2024

