



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

█
Docket No. 5920-24
Ref: Signature Date

█
█
█

Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 12 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, 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 Navy Reserve and began a period of active duty on 6 July 1982. Between 19 October 1983 to 18 July 1984, you received nonjudicial punishment in four occasions for the following offenses: unauthorized absence (UA) from appointed place of duty, stealing a pair of pants and a wallet, a total value of \$86.00, five instances of missing restricted muster, three instances of failure to report to your prescribed place of duty, and multiple instances of failure to obey a lawful order.

On 7 December 1984, you were convicted by special court martial (SPCM) for stealing a letter and \$200.00 postal money order, and two instances of stealing a letter and postal money order committed to a representative on the U.S. Postal Service, and wrongfully and unlawfully opening a letter committed to a U.S. Post Office. You were found guilty and sentenced to a Bad Conduct Discharge (BCD), reduction in rank, a period of confinement, and forfeiture of pay.

On 17 December 1984, you decided to waive your right to departmental level clemency review by the Naval Clemency and Parole Board. On 1 February 1985, your SPCM sentence was approved and duly executed. On 22 August 1985, you agreed to remain on active duty while awaiting higher level approval of continued active duty. However, on 22 October 1985, you were convicted by SPCM for conspiracy to commit an offense, willful damage to property, and larceny in excess of \$100.00. You were found guilty and sentenced to another BCD, reduction in rank, confinement at hard labor, forfeiture of pay, and a \$1,000.00 fine. After completion of all levels of review, on 23 June 1987, you were so discharged.

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 contentions that: (a) the correction should be made due to the ineffective representation of counsel and the guidelines of sentencing for a crime of conspiracy of knowing of the crime but not reporting it and being on the scene, (b) you were not informed of any appeal procedures for members of color during the 80s, (c) you were 18 years of age at the time of the incident and your counsel did not inform you of any options of filing an appeal. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

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 and SPCMs conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact it had on the good order and discipline of your unit. The Board noted you provided no evidence, other than your personal statement, to substantiate your contentions. Regardless, the Board observed that your case received multiple levels of legal review and no error was noted in the findings. Therefore, the Board was not persuaded by your argument that you were erroneously discharged due to ineffective representation of counsel or denial of due process. Ultimately, the Board determined that you were already given significant clemency when the Navy allowed you to stay on active duty after your first BCD. Despite being given the opportunity to correct your conduct deficiencies, you continued to commit additional serious misconduct.

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 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 that your request does not merit relief.

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 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,

9/4/2024

