



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

█
Docket No. 6080-24

Ref: Signature Date

█
█
█
█
█

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.

A three-member panel of the Board, sitting in executive session, considered your reconsideration application on 30 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 originally enlisted in the U.S. Navy and began a period of active duty service on 6 November 1989. Your enlistment physical examination, on 22 May 1989, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. Your last reenlistment commenced on 9 August 2000.

On 5 June 2003, pursuant to your guilty pleas, you were convicted at a General Court-Martial (GCM) of: (a) conspiracy to commit larceny of military property over a certain dollar value, (b) disposing of military property over a certain dollar value without proper authority, (c) stealing military property over a certain dollar value, and (d) using false requisitions and invoices/shipping documents in violation of 10 U.S.C. 1001. You were sentenced to confinement for forty-two (42) months, a reduction in rank to the lowest enlisted paygrade (E-1), and to be discharged from the Navy with a Dishonorable Discharge (DD). On 20 October 2003, the Convening Authority approved the GCM sentence, except suspended all confinement in excess of three (3) years for a period of three (3) years.

On 23 August 2005, the U.S. Navy-Marine Corps Court of Criminal Appeals concluded that the GCM findings and sentence were correct in law and fact and that no error materially prejudicial to your substantial rights was committed. Upon the completion of GCM appellate review in your case, on 20 July 2006, you were discharged from the Navy with a DD and were assigned an RE-4 reentry code.

On 20 September 2023, this Board denied your initial discharge upgrade petition.

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 to add your warfare specialist designator to your record. You contend that: (a) a discharge upgrade will enable you to qualify for service-connected injuries that you still suffer from, (b) you have been an honorable member of society and an active member of your community that you currently live in for over 14 years, (c) you have been gainfully employed and have been a role model to your peers and business owners alike in your profession, (d) you believe the DD was too harsh, (e) your prior service was honorable, (f) you accomplished many things and completed many schools, tasks, and were awarded a designation of surface warfare and air surface warfare, promoted to E-6, and maintained an evaluation of 4.0 and higher during the time of investigation, (g) you are remorseful and you admitted to your wrongdoings, and you regret what transpired and the decisions that were made by you, (h) you have been married over 14 years and father of 4 children, (i) you have been a business owner for 19 years that is part of a 35-member ██████████ franchise, and (j) you have an inventory of over 2 million, and you manage over 18 employees that you have trained in both areas of customer service and production. For purposes of clemency and equity consideration, the Board considered the entirety of the documentation you provided in support of your application.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. The Board did not believe that your record was otherwise so meritorious to deserve an upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined the record reflected that your misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not be held accountable for your actions.

The Board disagreed with your contention that your DD characterization was too harsh. The Board noted that you engaged in a continuing course of misconduct in your official capacity over an extended period of time. The Board determined that your willful and persistent misconduct, while acting in a position of trust, merited a DD.

The Board also noted that, although it cannot set aside a conviction, it might grant clemency in the form of changing a characterization of discharge, even one awarded by a court-martial. However, the Board concluded that despite your contentions this was not a case warranting any clemency as you were properly convicted at a GCM of serious misconduct. Moreover, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans or veterans' benefits, or enhancing educational or employment opportunities.

As a result, the Board determined that there was no impropriety or inequity in your discharge and concluded that your misconduct and disregard for good order and discipline clearly merited your discharge. While the Board carefully considered the evidence you submitted in mitigation and commends you on your post-discharge accomplishments, 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.

Regarding your request to add your warfare specialist designator to your record, the Board noted that your service record currently reflects that you earned the Enlisted Aviation Warfare Specialist designator and Enlisted Surface Warfare Specialist designator. They are both properly annotated in your record.

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,

9/13/2024

█

Executive Director

Signed by: █