



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. 6168-24
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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session on 24 July 2024, has carefully examined your current request. 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 previously applied to this Board for a discharge upgrade but were denied on 5 June 1990. The facts of your case remain substantially unchanged.

Subsequent to the Board's decision, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. On 31 October 1991, the NDRB denied your request after determining 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 to General (Under Honorable Conditions) (GEN) and contentions that you were told your discharge could be

upgraded after seven years, your service was Honorable prior to your misconduct, and you were dealing with personal relationship issues at the time. 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 NJP and request for discharge for the good of the service, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the negative impact your conduct had on the good order and discipline of your unit. Further, the Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows a discharge to be automatically upgraded after a specified number of months or years. Your record reflected two specifications of UA totaling 122 days; conduct which placed an undue burden on your chain of command and fellow service members, and likely negatively impacted mission accomplishment. Finally, the Board noted that the misconduct which led to your request to be discharged for the good of the service was substantial and, more likely than not, would have resulted in a punitive discharge and extensive punishment at a court-martial. Therefore, the Board determined you already received a large measure of clemency when the convening authority agreed to administratively separate you for the GOS; thereby sparing you the stigma of a court-martial conviction and likely punitive discharge.

As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization of service. 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 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,

8/13/2024

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