



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. 6326-24
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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).

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) 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 5 December 1967. On 5 July 1968, you began a period of unauthorized absence (UA) which lasted three days and resulted in nonjudicial punishment (NJP) on 23 July 1968. Between 11 February 1969 to 6 March 1969, you received two NJPs for two periods of UA from appointed place of duty and failure to obey a lawful order. On 28 March 1969, you received a fourth NJP for a period of UA from appointed place of duty. On 2 June 1969, you had another period of UA which lasted one-day. On 17 June 1969, you were counseled concerning frequent involvement of discreditable nature and advised that failure to take corrective action could result in administrative separation.

Between 7 July 1969 to 29 July 1969, you began five periods of UA totaling approximately seven days. On 1 August 1969, you began another period of UA which lasted seven days and resulted in you missing ship movement in two occasions. On 11 August 1969, you began another period of UA which lasted three hours, and 40 minutes and resulted in you again missing ship's movement. Between 12 August 1969 to 2 September 1969, you commenced two additional periods of UA totaling 17 days and resulting in you apprehension by civil authorities. On 5 September 1969, you began a tenth period of UA which lasted three days and resulted in your apprehension by civil authorities. You were charged with disorderly conduct by the civilian authorities, found guilty, awarded a \$20.00 fine plus court cost, and transferred to prison after you were unable to pay your fine.

On 23 September 1969, you began another period of UA which lasted two hours and 30 minutes. On 27 October 1969, you were convicted by special court martial (SPCM) for eight periods of UA. You were found guilty and sentenced to a Bad Conduct Discharge (BCD), reduction in rank, confinement at hard labor, and forfeiture of pay. In the meantime, between 25 February 1970 and 29 March 1970, you began two further periods of UA totaling 11 hours and 55 minutes. On 2 April 1970, your request for restoration and clemency was denied. On 6 April 1970, you received a fifth NJP for two periods of UA, three instances of larceny, and making a false statement. After completion of all levels of review, on 7 December 1970, you were discharged with a BCD.

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) you are not the person that you were at age 19, (b) you have a different mindset and are determined to make a difference to correct the racism and racial slurs that were overlooked even when you reported them, and (c) all evidence was destroyed to cover up the racism. Additionally, the Board noted you checked the "Other Mental Health" and "Harassment" boxes on your application but chose not to respond to the Board's request for supporting evidence of your claims. 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, civil conviction, and SPCM, 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 contention that you were harassed or treated unfairly. Finally, the Board observed that you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit 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. 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,

9/5/2024

