



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. 6842-24
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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 9 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 to 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 and began a period of active duty on 19 January 1981. On 11 February 1982, you were subject to nonjudicial punishment (NJP) for a violation of Article 86 of the Uniform Code of Military Justice (UCMJ) due to a brief period of unauthorized absence (UA) and a violation of Article 92 for being derelict in the performance of your duties. You received punishment of forfeitures of pay and 30 days of restriction and extra duties; however a portion of your punishment was suspended. On 29 March 1984, you received NJP for another period of UA from 9 February 1984 through 1 March 1984, which you terminated with your voluntary surrender. Your punishment resulted in reduction to the next inferior paygrade, 45 days restriction and extra duties, and two months' forfeiture of \$391.30 per month.

You absented yourself again, on 22 July 1984, and remained absent until 21 August 1984, during which period you missed your ship's movement twice on 22 and 23 July 1984. You terminated your UA period by again voluntarily surrendering to military authority. In light of your repeated, prolonged period of UA, you were charged and tried before Special Court-Martial (SPCM) for your UA period and two specifications of offenses under Article 87 due to missing your ship's

movement. Your sentence included 31 days confinement at hard labor, reduction to the lowest paygrade of E-1, six months forfeiture of \$397 pay per month, and a Bad Conduct Discharge (BCD). However, because you pleaded guilty, the Convening Authority suspended confinement in excess of 15 days. After completion of all levels of review, you were so discharged on 9 October 1985.

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 punitive discharge to “Honorable” and your contentions that the Department of Veterans Affairs (VA) has determined your character of service to be Honorable for its purposes, you were UA twice during your Navy career due to family circumstances, you had severe issues with your daughter and wife and your command would not allow you to take leave to address your family’s needs, and your father was diagnosed with terminal cancer but your command would again not allow you to take leave. For purposes of clemency and equity consideration, the Board noted you provided a personal statement and documents from the VA.

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 SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Additionally, unexpectedly absenting yourself from your command placed an undue burden on your chain of command and fellow service members, and likely negatively impacted mission accomplishment. Further, the Board notes that the VA character of service determination is not binding on the Board’s review of your service and discharge characterization. Although the Board, in its discretion, may view this VA determination as persuasive, the Board noted that this decision relied almost entirely on your own personal statement regarding your contentions. While it identified that there were SPCM records available as evidence, the record of this decision is unclear as to whether you provided the VA with a copy of the trial transcript which might have contained testimony regarding the mitigating circumstances you now claim. The Board observed that you have submitted no evidence, other than your own statement, regarding your allegations of denial of leave. Since you, as the Petitioner, bear the burden of proof in establishing an error or injustice, the Board did not find your claims of denial of leave to be persuasive in the absence of supporting evidence. Finally, the Board noted that, although one’s service is generally characterized at the time of discharge based on performance and conduct throughout the entire enlistment, the conduct or performance of duty reflected by only a single incident of misconduct may provide the underlying basis for discharge characterization.

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. While the Board carefully considered the evidence you submitted in mitigation, 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.

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 is attached 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,

8/23/2024

