



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

█
Docket No. 6903-24
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.

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 21 October 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 this 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).

You enlisted in the U.S. Navy and began a period of active duty on 12 August 2003. On 11 November 2004, you received nonjudicial (NJP) for five specifications of unauthorized absence (UA) and were awarded restriction and extra duties for 45 days, forfeitures of \$200.00 pay per month for two months, and reduction in rank to E-2. However, your reduction in rank was suspended for six months. Additionally, you were issued administrative remarks retaining you in the Navy, documenting your infractions, and advising you that subsequent violation(s) of the Uniform Code of Military Justice (UCMJ) or conduct resulting in civilian conviction(s) could result in an administrative separation under Other Than Honorable (OTH) Conditions. On 19 April 2005, you received a second NJP for three specifications of larceny. Previous to the NJP, your suspended reduction in rank was vacated due to your misconduct.

Consequently, you were notified that you were being recommended for administrative discharge from the Navy be reason of misconduct due to pattern of misconduct (POM) and commission of

a serious offense (COSO), at which time you waived your right to consult with counsel and to present your case to an administrative discharge board. Your commanding officer forwarded your administrative separation package to the separation authority (SA) recommending your administrative discharge from the Navy with an OTH characterization of service adding, “[Petitioner] is no longer fit for Naval Service. His behavior evidences an ongoing pattern of misconduct which includes unauthorized absence on several occasions totaling 12 days and larceny of a Dell laptop computer, a Cannon digital camera, and a pair of sunglasses from another Shipmate.” The SA directed your OTH discharge from the Navy by reason of misconduct due to COSO and, on 15 May 2005, 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: (1) due to mental health issues you are in need of a discharge upgrade, and (2) this upgrade would allow you to access necessary mental health services and work towards living a more stable and fulfilling life, and you are currently incarcerated. Additionally, you checked the “PTSD” and “Other Mental Health” boxes on your application but chose not to provide evidence in support of your claims. The Board also noted that, although your application indicates you submitted █
█ medical and mental health records, these documents were not included with your application. For purposes of clemency and equity consideration, the Board considered your personal statement.

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, 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, the Board noted you were provided an opportunity to correct your conduct deficiencies but chose to continue to commit misconduct. Further, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans’ benefits, or enhancing educational or employment opportunities. Finally, the Board observed that you provided no evidence, other than your statement, to substantiate your contentions.

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. Even in light of the Wilkie Memos 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,

11/8/2024

