



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. 7162-24
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.

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 reconsideration application on 11 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 enlisted in the U.S. Navy and began a period of active duty service on 25 May 1984. Your enlistment physical examination, on 30 November 1983, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

On 18 May 1988, your command involuntarily extended you beyond your EAOS pending adjudication of preferred charges for a Special Court-Martial (SPCM). On 18 June 1988, you submitted a request for a discharge in lieu of trial by SPCM. On 27 June 1988, your command denied your discharge request.

On 12 July 1988, pursuant to your guilty pleas, you were convicted at a SPCM of: (a) being an accessory after the fact to larceny, (b) four (4) specifications of conspiracy – conspiracy to commit larceny (x1), and conspiracy to conceal stolen property (x3), (c) wrongful appropriation, (d) larceny, (e) the wrongful removal of property with intent to prevent its seizure, and (f) the wrongful concealment of stolen property. You were sentenced to confinement at hard labor for five (5) months, a reduction in rank to the lowest enlisted paygrade (E-1), and to be discharged from the Navy with a Bad Conduct Discharge (BCD). Pursuant to the terms of the SPCM pretrial agreement, any confinement in excess of 100 days would be suspended upon the Convening Authority's (CA) action. Your security clearance was revoked for cause, on or about 30 August 1988, as a result of your punitive discharge. On 3 October 1988, the CA approved the SPCM sentence, except suspended all confinement in excess of 100 days for a period of six (6) months. Upon the completion of SPCM appellate review in your case, on 21 July 1989, you were discharged from the Navy with a BCD and were assigned an RE-4 reentry code.

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 were on the right track with your Navy career until you fell in with the wrong crowd who convinced you to help them hide items they had stolen from local residences, (b) when an investigation was launched, you cooperated fully without a grant of immunity, and you helped investigators find much of the hidden property allowing it to be returned to its rightful owners, (c) despite your cooperation both in helping the victims reclaim their property and in helping law enforcement to take action against your friends, you were given no meaningful credit, as you were sentenced to a BCD, reduction to E-1, and five (5) months confinement, and (d) your cooperation at the time and your positive civilian contributions post-discharge warrant upgrading your discharge in the interests of clemency. 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 serious 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 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 SPCM of serious misconduct.

As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your willful and persistent 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 for 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.

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,

10/30/2024

