



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. 7396-24
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 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).

After you were granted an enlistment waiver for pre-service marijuana use, you enlisted in the U.S. Navy and began a period of active duty on 5 April 1985. While at █, on 11 September 1985, you received nonjudicial punishment (NJP) for two specifications of failing to obey a lawful order. While at █, on 7 October 1986, you were convicted by a special court-martial (SPCM) of unauthorized absence (UA), failure to go to your appointed place of duty, and two specifications of assault. You were sentenced to be confined for four months (two of which were suspended), to forfeit \$250.00 pay per month for four months, and to be reduced in rank to E-1. On 4 February 1987, you were issued administrative remarks documenting your disrespect to a senior petty officer and failure to maintain military bearing yet retaining you in the Naval Service and advising you subsequent violation(s) of the Uniform Code of Military Justice (UCMJ) or conduct resulting in civilian conviction could result in an administrative separation under other than honorable conditions.

On 29 July 1987, you were disrespectful towards a commissioned officer, disobeyed a lawful order, and violated a general order. Consequently, you were referred to special court-martial. On 21 October 1987, through military counsel, you requested a separation in lieu of trial (SILT) with an Other Than Honorable (OTH) characterization of service for the previously mentioned offenses. On 27 October 1987, a staff judge advocate found your case proceedings to be sufficient in law and fact. Ultimately, your SILT request was approved by the separation authority (SA) and you were so discharged on 13 November 1987.

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) you need military benefits and assistance, and (2) you believe your discharge was unjust. For purposes of clemency and equity consideration, the Board noted you did not provide 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, SPCM, and SILT request, 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. The Board also noted that the misconduct that led to your request to be discharged in lieu of trial by court-martial was likely substantial and, more likely than not, would have resulted in a punitive discharge and/or extensive punishment at a court-martial. Therefore, the Board determined that you already received a large measure of clemency when the convening authority agreed to administratively separate you in lieu of trial by court-martial; thereby sparing you the stigma of another court-martial conviction and possible punitive discharge. Additionally, the Board concluded the record reflected that your misconduct was intentional and willful and demonstrated you were unfit for further service. 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. Lastly, the Board observed that you provided no evidence, other than your statement, to substantiate your contention that your discharge was unjust.

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 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,

11/8/2024

