



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. 7526-24
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 1 November 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 with an admitted pre-service history of marijuana use and began a period of active duty on 26 October 1987. On 6 June 1988, you absented yourself without authority and were issued administrative counseling advising you that you were being retained in the Navy but warning you that a potential pattern of misconduct could result in adverse consequences. You received another such counseling warning, on 17 September 1988, due to underage drinking and public intoxication. On 8 December 1988, you were convicted by civilian authorities for petit larceny; however, your 10 day jail sentence was suspended. Shortly thereafter, on 5 January 1989, you were absent without authority for two days due to apprehension by civilian authorities. You incurred an additional unauthorized absence (UA), on 25 January 1989 and were subject to nonjudicial punishment (NJP) for violations of the Uniform Code of Military Justice (UCMJ) which included Article 86 for your UA period, Article 92 for

violation of a lawful general regulation by wearing an earring, and Article 134 for disorderly conduct. You then incurred a second NJP, on 8 February 1989, for four specifications of violation of Article 92 of the UCMJ for two violations of a lawful order by wearing civilian clothing without authorization, dereliction of duty, and improper decorum. You also incurred an additional Article 86 offense for another UA period.

Consequently, you were notified of processing for administrative separation by reason of pattern of misconduct and you elected to waive your right to a hearing before an administrative separation board. The recommendation for your separation under Other Than Honorable (OTH) conditions was approved by Commander, ██████████ and you were so discharged on 10 May 1989.

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 discharge and change your narrative reason for separation to "Secretarial Authority." You contend that you and the sailors on your ship were placed into a hotel on per-diem, which devolved into "a drunk fest of a bunch of sailors basically on paid vacation." You attribute succumbing to peer pressure due to the environment, your youth, and your immaturity. However, you feel that your chain of command failed you by encouraging more drinking rather than getting you support to address your substance abuse issues until, after several incidents which got you into trouble, you were essentially given a bus ticket and told to leave. After your discharge, you initially struggled with addiction but were able to achieve sobriety in 2013 and have maintained. With respect to your post-discharge accomplishments, you state that you are a truck driver and home owner, and that you foster parent your grandchild. You deeply regret your misconduct and the poor decisions you made during your service but remain proud to have served. For the purpose of clemency and equity consideration, you submitted a personal statement and three character 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 and civil conviction, 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. Further, the Board considered the likely discrediting effect your civil conviction and public disorderly conduct had on the Navy. Finally, the Board observed that you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct; which led to your discharge. The Board found no evidence that the Navy or your chain of command encouraged you to abuse alcohol and was not persuaded by your contention.

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 characterization. While the Board carefully considered the evidence you submitted in mitigation and commends you for your post-discharge sobriety and accomplishments, even in light of the Kurta, Hagel, and Wilkie Memos and reviewing the record liberally and 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,

11/29/2024

