



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

██████████
Docket No. 7733-24
Ref: Signature Date

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Dear ██████████

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 13 September 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).

The Board determined that your personal appearance, with or without counsel, would not materially add to the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Navy and began a period of active duty on 20 August 1990. Prior to completing your first year of service, you were subject to nonjudicial punishment (NJP), on 2 April 1991, for violations of the Uniform Code of Military Justice (UCMJ) under Articles 121, for larceny, and 134, for unlawful entry into multiple vehicles aboard a military installation, during which you stole diverse items. Four months later, in August 1991, you were delivered into the custody of civilian authorities pending charges related to armed robbery. You remained in custody until your release on 16 October 1991. However, upon your release, you elected not to return to military authority, as was required, and instead remained in an unauthorized absence (UA) status until your voluntary surrender on 28 October 1991.

On 27 January 1992, you were convicted by civilian authorities pursuant to your plea of guilty to the offense of felony grand larceny with a suspended sentence of three years' incarceration, which required both probation and restitution. Following this conviction, you were notified of processing for administrative separation by reason of misconduct due to your civil conviction. After consulting counsel, you elected to request a hearing before an administrative separation board. While pending action on your request for a board hearing, you were subject to two additional NJP actions for four specifications of violation of Article 86 due to unauthorized absences and making a false official statement, in violation of Article 107. The third and final NJP occurred merely a week prior to your administrative separation board hearing. The members of your administrative separation board found the basis for separation substantiated by a preponderance of the evidence and recommended that you be separated under Other Than Honorable (OTH) conditions. The recommendation for your separation was approved and you were discharged OTH conditions on 23 November 1992.

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 you served your country but had issues during your military service which led to your civil conviction, you have health issues now for which you cannot afford medical care, and you would like to be able to obtain medical benefits via the Department of Veterans Affairs (VA). Additionally, the Board noted you checked the "Other Mental Health" box on your application but chose not to respond to the Board's request for supporting evidence. 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 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. In addition, the Board considered the likely discrediting effect your civil conviction had on the Navy. Further, the Board observed that you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct. Finally, 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.

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. 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 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,

10/10/2024

