



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. 8351-24
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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 7 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 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, 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 Navy and began a period of active duty on 26 May 1980. Between 11 September 1981 to 21 January 1982, you received nonjudicial punishment (NJP) on three occasions for two instances of dereliction of duty, violation of a lawful order by possessing a controlled substance-valium, and wrongful possession of a controlled substance-ropinirol. Consequently, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to frequent involvement, at which point, you decided to waive your procedural rights. Your commanding officer recommended an Other Than Honorable (OTH) discharge characterization of service by reason of misconduct due to frequent involvement. However, on 16 April 1982, you began a period of unauthorized absence (UA) which lasted 210 days. While you were UA, the separation authority approved your discharge.

After your return from UA, on 22 December 1983, you began a second period of UA which lasted 36 days. Therefore, your commanding officer recommended that you were retained on active

duty pending a court martial. On 3 February 1983, you began a third period of UA which lasted 1,095 days and resulted in your apprehension by civil authorities. On 21 May 1986, you were convicted by general court martial (GCM) for a period of UA. You were found guilty and sentenced to a Bad Conduct Discharge (BCD), confinement, and forfeiture of pay. On 13 October 1986, you were so discharged with a BCD characterization of service by reason of conviction by GCM.

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 have suffered enough and paid the price for being young and dumb, (b) your XO was jealous of your berthing space and relationship with the CO, (c) you requested leave to attend to your father's illness and your XO denied your request, (d) you decided to leave anyway and remained on UA status since you did not want to face your XO, (e) your father had a second heart related incident and you were told to leave and come back whenever you were ready. For purposes of clemency and equity consideration, the Board noted you did not provide supporting 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 GCM, outweighed these mitigating factors. Further, the Board found that your conduct showed a complete disregard for military authority and regulations. Additionally, the Board considered the likely negative impact it had on the good order and discipline of your unit. The Board noted that you provided no evidence, other than your statement, to substantiate your contentions. Regardless, the Board was not persuaded by your contentions because your record does not support your chronology of events. In particular, the Board noted you were already pending an administrative discharge for multiple incidents of misconduct, that included two drug offenses, when you chose to go UA. You returned on your own volition from the first period of UA and later commenced your extended period of UA once your CO determined a court-martial was appropriate in your case.

As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant a BCD 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 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,

10/29/2024

