

Wilkie Memo. These included, but were not limited to, your desire to upgrade your discharge character of service and contentions that: (1) in no way were you going to take the items and keep or sell them, (2) you were not given the opportunity to speak or defend yourself, (3) you regret trying to help in securing the items so they were not stolen, and (4) you are having health issues and need an Honorable to receive medical treatment from the Department of Veterans Affairs (VA)¹. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs, outweighed these mitigating factors. After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. In making this finding, the Board considered the seriousness of your misconduct and the likely negative effect your misconduct had on the good order and discipline of your command. Further, the Board determined the presumption of regularity applied to your second NJP. The Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. After reviewing your statement, the Board determined you provided insufficient evidence to overcome the presumption. Therefore, the Board was not persuaded by your explanation regarding your larceny offense. 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. 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

¹ The Board noted that the VA documentation you provided with your application states that you have been granted service connection for a variety of disability conditions "for treatment purposes." The Board thus determined you are eligible for VA treatment of those disability conditions based on the VA decision letter. The Board, however, understands you are not eligible for compensation and pension benefits as a result of your assigned characterization of service.

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,

12/13/2024

