



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. 9119-24
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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 20 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 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 United States Navy and commenced active duty on 12 July 1982. On 3 February 1984, you were arrested by civil authorities for two counts of indecent exposure. On 6 March 1984, you were convicted by the State of ■■■■ for your offenses. Consequently, you were notified of administrative separation processing for commission of a serious offense and civil conviction. On 19 April 1984, you submitted a qualified waiver of your administrative separation board in exchange for a General (Under Honorable Conditions) (GEN) discharge. However, it appears an administrative separation board was convened, found misconduct, and recommended you be separated with a GEN characterization of service. Further, it also appears the separation erroneously directed your separation with an Other Than Honorable (OTH) characterization of service¹. Notwithstanding the approved discharge characterization of service, you were discharged with a GEN characterization of service on 22 August 1984.

¹ The Board determined it was consistent with existing policy and in the interest of justice not to correct your record to reflect an OTH characterization of service.

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 character of service and contentions that, (1) you were discharged due to a plea deal that you could not defend due to racial prejudice in █, (2) it was a no contest plea that was cleared after a period of time, (3) you have lived your life without any legal issues demonstrating that the original accusation was not justified, and (4) you did not understand the discharge was not the same as Honorable until applying for employment with the federal government. For purposes of clemency and equity consideration, the Board considered that you did not submit any supporting documentation 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 civil conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded your misconduct showed a complete disregard for military authority and regulations. Further, the Board found that your misconduct was intentional and made you unsuitable for continued naval service. Furthermore, the Board also determined that the evidence of record did not demonstrate that you were not responsible for your conduct or that you should otherwise not be held accountable for your actions. Additionally, the Board considered the likely discrediting effect your civil conviction had on the Navy. Finally, the Board observed that you provided no evidence, other than your statement, to substantiate your contentions. Ultimately, the Board concluded you were fortunate to receive a GEN characterization based on your misconduct and the desire of the separation authority to assign you an OTH characterization of service.

As a result, the Board determined significant negative aspects of your service outweigh the positive aspects and continues to warrant a GEN 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 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,

12/18/2024

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Executive Director

Signed by: █