



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

██████████
Docket No. 9455-24
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 case 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 this 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).

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Navy and commenced a period of active duty on 29 September 1973. On 8 October 1974, you were convicted by civil authorities for attempted possession of marijuana. On 3 December 1974, you received non-judicial punishment (NJP) unauthorized absence (UA) from 16 September 1974 to 5 October 1974. Subsequently, you went on another period of UA from 13 October 1975 to 17 October 1975. On 13 January 1976, you underwent a medical evaluation due to alcohol related misconduct and were diagnosed with chronic alcoholism. After completing treatment for your alcoholism, on 16 July 1976, you were convicted at a special court martial (SPCM) for two specifications of destruction of government property and assault; incidents that precipitated your January medical evaluation. On 13 August 1976, you received your second NJP for failure to obey a lawful order and disrespect toward a petty officer. On

5 November 1976, you were convicted at a summary court martial (SCM) for assault. On 17 December 1976, you received your second SCM conviction for drunkenness on duty. On 20 January 1977, you received your third NJP for the period of UA from 30 December 1976 to 16 January 1977. Consequently, you were notified of the initiation of administrative separation proceedings as a result of your misconduct due to a pattern of misconduct and you elected your right to consult with counsel but waived a hearing before an administrative discharge board. On 18 March 1977, you were found guilty by civil authorities for disorderly intoxication. On the same day, you were convicted at your third SCM for failure to obey a lawful regulation. Ultimately, the separation authority approved and directed your discharge with an Other Than Honorable (OTH) character of service by reason of misconduct due to pattern of misconduct. On 6 April 1977, you were so discharged.

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 were informed your discharge would automatically upgrade, your need for veterans' benefits, and you previously qualified for benefits but were later denied. 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 of your claim. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application but noted you provided no documentation describing post-service accomplishments or advocacy letters.

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, SPCM, SCMs, and civil convictions, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included misconduct with both civil and military authorities. The Board observed that you were provided multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct; which led to your OTH discharge. Your conduct not only showed a pattern of misconduct but was sufficiently serious to negatively affect the good order and discipline of your command. Further, the Board considered that you were diagnosed and treated for your alcoholism. Additionally, the Board also noted that there is no provision of federal law or in Navy regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. 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, 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 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,

12/29/2024

