



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

██████████
Docket No. 10964-24
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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 17 January 2025. 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 4 September 1996. On 12 May 1999, you were subject to nonjudicial punishment (NJP) for a violation of Article 86 of the Uniform Code of Military Justice (UCMJ) due to an unauthorized absence on 21 April 1999. Subsequently, on 18 April 2000, you were tried by Special Court-Martial (SPCM) and convicted, according to your pleas, for three violations of UCMJ, including Article 109, for willfully and wrongfully damaging a motorbike graphics package, property of another sailor, by scraping it off, Article 121, for wrongfully stealing the motorbike of another sailor, valued at approximately \$3500, and Article 134, for wrongfully and unlawfully subscribing a false statement to civilian police while under oath. As a result of your pleas of guilt for those offenses, you were sentenced

to 80 days of confinement, reduction to the paygrade of E-1, and a Bad Conduct Discharge; however, the Convening Authority suspended your punitive discharge in accordance with the terms of your pre-trial agreement. Consequently, you were notified of processing for administrative separation by reason of misconduct due to commission of a serious offense. Also consistent with the terms of your pre-trial agreement, you waived your right to a hearing before an administrative separation board. Ultimately, you were administratively discharged with an Other Than Honorable (OTH) characterization of service on 14 September 2000.

You previously applied to the Naval Discharge Review Board (NDRB) contending that you were ashamed of the crime you had committed and admitting that your punishment was just. However, you believed your OTH discharge was unjust because you had learned a valuable lesson and lived an honorable life in the years since your discharge. You contended that your characterization of service forced you to continue to pay for your crime. Your request was considered on 27 November 2001 and denied.

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 and your contentions that your trial defense counsel was inadequate in representing your defense, you would never steal anything and have always been honest and trustworthy, and you served well during your time in service, excelling at every mission. 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 NJP and SPCM, 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. To the extent that you now appear to deny guilt for the misconduct that formed your SPCM, the Board noted that you pleaded providently before a military judge to the offenses of which you were convicted, and you also acknowledged your guilt in your application to the NDRB. Therefore, the Board was not persuaded by your current contentions of innocence and inadequate representation of counsel. Rather, the Board considered that you were sentenced to a punitive discharge which was suspended per the negotiated terms of a pre-trial agreement which you voluntarily accepted. The Board concluded that you fully received the benefit of your bargain in receiving an administrative discharge in lieu of a punitive discharge.

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,

2/10/2025

[REDACTED]

Executive Director

Signed by: [REDACTED]