



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. 12020-24
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 24 February 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, 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 began a period of active duty on 12 December 1994. On 14 December 1994, you received nonjudicial punishment (NJP) for two instances of unauthorized absence (UA) from appointed place of duty, disrespectful in language and deportment towards a superior petty officer, six instances of disobeying lawful and written orders, making a false official statement, assault consummated by battery, and disorderly conduct. On 6 January 1995, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to commission of a serious offense. Subsequently, you decided to consult with counsel and requested a case hearing by an Administrative Discharge Board (ADB). On

11 January 1995, you received a second NJP for three instances of UA from appointed place of duty, failure to report to your prescribed place of duty, and assault consummated by battery. On 25 January 1995, you received a third NJP for a period of UA from appointed place of duty.

On 28 February 1995, the ADB voted (3) to (0) that you committed misconduct due to commission of a serious offense and recommended that you were administratively separated from the Navy with a General (Under Honorable Conditions) (GEN) discharge characterization of service. Your commanding officer disagreed with the ADB recommendation and recommended an Other Than Honorable (OTH) discharge characterization. The separation authority approved and ordered a GEN discharge characterization by reason of misconduct due to commission of a serious offense. On 14 May 1995, 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 contention that: (a) your discharge was unfair as you were dealing with a racist chief petty officer who wanted to find reasons to relieve you from duty, (b) you were involved in a fight and 45 days in restrictions due to an argument with another shipmate that ended up with him trying to stab you with a knife, (c) you were convicted by court martial and served three days in the brig with bread and water, (d) it has been 29 years and a fight should not have been the reason for your dismissal with an OTH¹, (e) you were able to graduate from college with two degrees, have a family, and served as an administrator. For purposes of clemency and equity consideration, the Board noted you provided a copy of your college transcripts and your biography.

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, 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. The Board observed you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct, which led to your GEN discharge. Your conduct not only showed a pattern of misconduct but was sufficiently pervasive and serious to negatively affect the good order and discipline of your command. Further, the Board also noted you provided no evidence, other than your personal statement, to substantiate your contention of unfair treatment. Lastly, the Board determined that you already received a large measure of clemency when the separation authority agreed to administratively separate you with a General discharge characterization despite your extensive record of misconduct over a relatively brief period of service.

As a result, the Board determined that there was no impropriety or inequity in your discharge and concluded that your misconduct and disregard for good order and discipline clearly merited your discharge. 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

¹ As previously discussed, even though your commanding officer recommended an OTH discharge, the separation authority approved a GEN discharge. A GEN characterization of service is reflected on your DD Form 214.

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 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,

3/18/2025

