



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. 0317-25
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 11 April 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 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 Navy and began a period of active duty on 24 May 1979. On 7 December 1979, you received non-judicial punishment (NJP) for disrespect toward academic review board and six specifications of failure to obey a lawful order. On 3 March 1980, you received your second NJP for disrespect toward a petty officer, five specifications failure to obey a lawful order, false official statement, and wearing a civilian jacket with your military uniform. That same day, you received administrative remarks (Page 13) counseling regarding your NJP and warned that further misconduct could result in administrative separation. On 6 March 1980, you were convicted at a special court-martial (SPCM) for two specifications of unauthorized absence and two specifications of disrespect in language and deportment. On 29 October 1980, you were counseled by your commanding officer on the use of derogatory epithets and failure to conform to the Navy's equal opportunity program. On 31 October 1980, charges were referred to a second SPCM for unauthorized absence (UA), four specifications of disrespect toward a petty

officer, failure to obey a lawful order, resisting apprehension, breach of peace, wrongful use of provoking words, and assault.

Based on the information contained on your Certificate of Release or Discharge from Active Duty (DD Form 214), it appears that you submitted a voluntary written request for an Other Than Honorable (OTH) discharge for separation in lieu of trial (SILT) by court-martial. In the absence of evidence to contrary, it is presumed that prior to submitting this voluntary discharge request, you would have conferred with a qualified military lawyer, been advised of your rights, and warned of the probable adverse consequences of accepting such a discharge. As part of this discharge request, you would have acknowledged that your characterization of service upon discharge would be an OTH.

Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file. Notwithstanding, 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. Your DD Form 214 reveals that you were separated from the Navy, on 18 November 1980, with an Other Than Honorable (OTH) characterization of service, narrative reason for separation of "For the Good of the Service," separation code of "KFS," and reenlistment code of "RE-4."

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 you: (1) took an OTH discharge in lieu of time in the brig for a fight, you were not at fault for the fight, and did not want to spend time in jail for something you did not do, (2) you were diagnosed with bipolar disorder and have taken lithium for most of your life, (3) have been an example to your community, own your own business, and paint for a living, and (4) you want your case reviewed because you believe you should not have received an OTH. For purposes of clemency and equity consideration, the Board considered that you did not provide evidence 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, SPCM, and SILT discharge, 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. The Board observed you were given 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 pervasive and serious to negatively affect the good order and discipline of your command. Further, the Board noted you provided no evidence, other than your statement, to substantiate your contentions. Therefore, the Board determined the presumption of regularity applies with your referred charges that formed the basis for your SILT request and discharge.

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. 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 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,

4/28/2025

