



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

Docket No: 0670-21
Ref: Signature Date

Dear

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 24 February 2021. 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 7 June 2004. Unfortunately, your administrative separation documents are not in your service record. However, 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 the good of the service to avoid trial by court-martial. Specifically, your DD Form 214, reveals that on 28 July 2005, you were discharged from the naval service with an OTH characterization of service, the narrative reason for separation is "In lieu of trial by court-martial," and your separation code is "KFS," which corresponds to a separation in lieu of trial by court-martial. 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 (as is in this case), the Board will presume that those public officers have properly discharged their official duties. As such, the Board presumed that prior to submitting your voluntary discharge request, you would have conferred with a qualified military lawyer, you would have been advised of your rights, and

would have been warned of the probable adverse consequences of accepting such a discharge. As part of this discharge request, you would have also acknowledged that your characterization of service upon discharge would be other than honorable (OTH).

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 have your record corrected to reflect that you were not a deserter. With regard to this contention, the Board noted your official military personal file (OMPF) contains a record of unauthorized absence (NAVPERS 1070/606) indicating you commenced a period of unauthorized absence (UA) on 13 December 2004 and you were declared deserter on 12 January 2005. The NAVPERS 1070/606 is authorized by regulatory guidance when a Sailor commences a period of UA. Further, the NAVPERS 1070/606 indicates that your period of UA exceeded 30 days, thus declaring you a deserter in accordance with regulatory guidance. The Board also noted that you did not submit any documentation or advocacy letters to be considered in support of your petition. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. 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,

3/15/2021

■
Executive Director