

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

> Docket No: 5628-21 1899-06 Ref: Signature Date



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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session, considered your application on 27 October 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).

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You reenlisted in the Navy and began a period of active duty on 9 January 1973. On 16 November 1973, you commenced a period of unauthorized absence (UA) that subsequently concluded upon your return to military authorities on 25 February 1974, totaling 99 days. On 20 March 1974, you submitted a written request for separation for the good of the service in lieu of trial by court-martial for the foregoing period of UA. Prior to submitting this request, you conferred with a military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. As part of this discharge

request, you admitted your guilt to the foregoing offense and acknowledged that your characterization of service upon discharge would be other than honorable (OTH). Your request was granted, and on 29 March 1974, you were so separated.

In reviewing your separation and characterization of service, the Board considered the totality of the circumstances to determine whether relief is appropriate today in the interests of justice in accordance with guidance provided by the Under Secretary of Defense for Personnel and Readiness (*Wilkie Memo of 25 July 2018*). Accordingly, the Board carefully considered all potentially mitigating factors, such as your desire to upgrade your discharge character of service. The Board also considered your contentions that: (a) you and your wife were separating and you had a hard time dealing with the separation; and (b) you feel that your character of service should be upgraded due to your prior service of good conduct. Additionally, the Board recognized and considered your statement in support of your claim to the Department of Veterans Affairs annotated on the VA Form 21-4138.

Based upon this review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your subsequent separation at your request to avoid trial by court-martial for a period of unauthorized absence totaling 99 days, outweighed these mitigating factors. 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,