



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: 6601-21
Ref: Signature Date



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 3 November 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).

Prior to the beginning of your active duty service, on 22 December 1999, you were given a medical examination, which reflected no abnormalities and found you qualified for enlistment. Additionally, you reported no abnormalities concerning your medical history. On 28 February 2000, you began your period of active duty service. On 22 July 2000, you commenced a period of unauthorized absence (UA) that subsequently concluded upon your return to military authorities on 28 August 2000, totaling 37 days.

On 16 October 2000, you submitted a written request for separation 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 30 October 2000, you were so separated.

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 submission of supporting documentation and your desire to upgrade your discharge character of service. The Board also considered your contentions that: 1) you had a serious medical affliction and was denied medical attention; these afflictions were the direct result of prior surgeries and issues that you were instructed not to disclose by your recruiter; 2) your Certificate of Release or Discharge from Active Duty (DD Form 214) states "In Lieu of Trial by Court-Martial" which is erroneous; and 3) your OTH character of service should not be listed on your DD Form 214 because you were otherwise a model Marine and wanted nothing but to succeed as a Marine, and you only did as you were instructed to do by your Command.

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 UA totaling 37 days, outweighed these mitigating factors. About your contentions, the Board noted there is no evidence in the record to support your contentions. Additionally, the Board discerned no procedural defect, impropriety, or inequity in your discharge and determined your misconduct warranted an OTH character of service. 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,

11/20/2021

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Executive Director
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