



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: 6631-21
Ref: Signature Date



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 22 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).

On 30 August 1994, you signed a confirmation of enlistment and were enrolled in the Delayed Entry Program (DEP). DEP is a program whereby individuals going into active duty in the United States Armed Forces enlist first in DEP and remain so for up to a full year before reporting to basic training. This program places an emphasis on preparing recruits for basic training. A notification of administrative separation letter from Commanding Officer, Navy Recruiting District █ dated 14 April 1994, documents you were being considered for an administrative separation from DEP due to your refusal to participate as evidenced by your recruiter's inability to contact you. On 26 April 1994, an administrative entry captured you were separated with an uncharacterized entry level separation. Despite this, you were allowed to move forward with your naval career and began a period of active duty on 24 October 1994. On 16 August 1995, you received your first nonjudicial punishment (NJP) for being in an unauthorized absence (UA) status from 17 July 1995 until you surrendered 21 days later on 7 August 1995. On 11 September 1995, you received a retention counseling/warning documenting deficiencies in

your performance and/or conduct regarding your unauthorized absence. This remark also documented you missed ship's movement on 18 July 1995, and noted that any further deficiencies in your performance and/or conduct might result in disciplinary action and processing for administrative separation. On 1 November 1995, you were again counseled for failing the official physical readiness test. On 19 June 1996, you received a second NJP for two (2) specifications of disrespect towards a petty officer and disobeying a lawful order. Although previously counseled advising of the possible consequences should you have further misconduct, you were retained on active duty. On 26 February 1997, you received a third NJP for wrongful use of marijuana.

Unfortunately, the documents related to your administrative separation are not in your official military personnel file (OMPF). In this regard, 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 the case at present), will presume that they have properly discharged their official duties.

Your Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that you were separated from the Navy on 12 March 1997 with an other than honorable (OTH) characterization of service, your narrative reason for separation is "Misconduct due to a Pattern of Misconduct," your separation code is "HKA," and your reenlistment code is "RE-4."

You contend you served for 2 ½ years abroad in a combat zone and at home. 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 contentions noted above. Additionally, the Board noted you did not submit advocacy letters or post-service documents to be considered for clemency purposes. Based upon this 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. 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,

12/14/2021

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