



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

■  
Docket No: 6899-21  
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 24 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).

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 enlisted in the Navy and began a period of active duty on 9 November 1992. On 16 June 1994, you received non-judicial punishment (NJP) for an unauthorized absence (UA) totaling 14 days, missing movement, false official statement, and conspiracy by wrongfully giving the American Red Cross names from the obituaries to go home on emergency leave. On 27 March 1996, you submitted a written request for separation in lieu of trial (SILT) by court-martial for seven specifications of unauthorized absence totaling 201 days. You also requested that your characterization of service upon separation be general (under honorable conditions). On 29 April 1996, the commanding officer recommended to the separation

authority that your request for a general (under honorable conditions) character of service be disapproved, and recommended separation under other than honorable conditions (OTH). On 31 May 1996, the separation authority denied your request for separation with a general (under honorable conditions) character of service in lieu of trial by court-martial. On 7 June 1996, you acknowledged receipt of the separation authority's decision.

Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Specifically, your letter dated 13 May 1996 requesting for separation under other than honorable conditions in lieu of trial by court-martial and the separation authority's decision document. 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 (as is the case at present), will presume that they have properly discharged their official duties.

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 OTH discharge for separation in lieu of trial 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, you would have 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. On 3 July 1996, you were discharged from the Navy with an OTH characterization of service by reason of in lieu of trial by court-martial.

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 submission of supporting documentation. The Board also considered your contention that you completed the paperwork for a hardship discharge as per your command; your command knew of the issues that were going on with your two children. You further state that you followed every protocol given to you by your command. You were bringing your children to the ship every day until you were told by your division officer that you could call in; you were also told that you would get your discharge in the mail, but your discharge never came. Additionally, as part of your post service accomplishments, you state that over the last 20 years, you have become a youth minister working with kids on a daily basis.

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 NJP and subsequent separation at your request to avoid trial by court-martial for seven specifications of UA totaling 201 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



Docket No: 6899-21

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,

12/16/2021



Executive Director

Signed by:

