



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: 7466-21
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 1 December 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 Marine Corps and began a period of active duty on 16 July 1996. On 4 January 1999, you received non-judicial punishment (NJP) for an unauthorized absence (UA). On 24 January 1999, you commenced a period of UA that subsequently concluded upon your return to military authorities on 17 August 2001, totaling 936 days. On 19 August 2001, 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 18 October 2001, 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 assertions that: (a) you have seen the error of your ways, and have grown into a decent human being; (b) you made mistakes that you are suffering for and now realize how important and paramount self-behavior and self-appearance is; and (c) you are sorry for the way you behaved and your fatal mistake was not being focused and true to yourself.

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 a UA totaling 936 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,

12/23/2021

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Executive Director

Signed by: █