



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

■  
Docket No: 1451-22  
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 18 April 2022. 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).

You enlisted in the Navy and began a period of active duty on 12 June 1985. On 23 January 1986, you received nonjudicial punishment (NJP) for two specifications of unauthorized absence (UA), the first totaling one day, the second totaling five days, both periods ending with your surrender. Subsequently, on 15 July 1986, you commenced an additional period of UA totaling 195 days until you surrendered on 23 January 1987.

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, 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 3 April 1987 with an Other Than Honorable (OTH)

characterization of service, your narrative reason for separation is “Separation In Lieu of Trial by Court-Martial,” your separation code is “KFS,” and your reenlistment code is “RE-4.”

On 6 October 1994, you petitioned the Naval Discharge Review Board (NDRB) for an upgrade of your characterization of service in order to reenlist. On 10 April 1995, the NDRB decided there was no impropriety or inequity in your discharge and your case did not warrant relief.

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 and your contentions that, “I was not dishonorably discharged. I was discharged with an (O.T.H) and it was because I was injured during my AWOL time where I got hurt while working on the ship and during the time when I had to come home to heal my own leg because of threats to amputate my leg due to infection. However, I was never dishonorably discharged and I dispute that wholeheartedly.”

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 NJP and 195-day UA, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded it showed a complete disregard for military authority and regulations. Further, the Board noted that you did not submit advocacy letters or post-service documents to be considered for clemency purposes. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization. The Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting clemency in the form of an upgraded characterization 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,

5/10/2022

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Executive Director  
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