



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

█
Docket No: 2487-22
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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 22 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 to the Kurta Memo and 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 began a period of active service on 24 August 1992 with an end of obligated service of 23 August 1996 (EAOS). You served without incident until 18 May 1996, at which time you absented yourself without authority until 8 August 1996. During your period of unauthorized absence (UA), you also missed ships movement on three occasions. You were declared a deserter on 31 May 1996. Although you voluntarily surrendered from your UA, you received NJP for Article 85, desertion due to your UA; Article 91, willful disobedience of an order from a superior master chief petty officer; and, Article 121, larceny of Basic Allowance for Quarters from 11 March 1996 through 15 May 1996, during which time you resided in government housing and were not entitled to receive a housing allowance. Your punishment was a written reprimand which is not documented in your service record. You were processed for administrative separation for misconduct due to commission of a serious offense and elected to waive your right to consult counsel, to submit a statement on your behalf, or to a hearing before an administrative board. The request for your separation was approved on 27 August 1996, after

your EAOS, and you were discharged on 30 August 1996 with an Other Than Honorable (OTH) characterization of service.

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. This includes, but not limited to, your desire to upgrade your characterization of service based on quality of service and your contention that you were executing a final move to relocate your dependent family to your home of record, that you were overpaid the housing allowance due to an administrative error but repaid the debt, that your dependent child was hospitalized and in need of a liver transplant, and that you returned to the ship voluntarily to resolve the overpayment. The Board noted that your command declared you a deserter after less than 15 days of UA; however, the Board concluded this action indicated that your command had reason to believe that you did not intend to return prior to your EAOS and that your absence was, in fact, not authorized. The Board observed the lack of evidence in support of your contentions, such as a copy of your final orders or of your executed move at government expense, a copy of any approved or denied request for regular leave or terminal leave incident to your impending EAOS or incident to your dependent's health care needs, evidence of medical records in support of your contention that your dependent child was hospitalized or required an organ transplant, or record of a determination of debt to Defense Finance and Accounting Services to support your contention of that you incurred the debt in error or record of your repayment that debt. Although the Board found that your UA period should have been punished as an Article 86 offense rather than Article 85 based on your voluntary return, the Board did not consider that offense as determinative of your OTH discharge in light of the other offenses evidence by your NJP. Further, the Board concluded that even though your discharge occurred after your original EAOS, under a presumption of regularity and absent rebuttal evidence to the contrary, the Board found that you either voluntarily extended for legal proceedings or were placed on valid legal hold to permit discharge past your EAOS. As a result, the Board concluded your discharge and assigned characterization of service was supported by the evidence. In addition, the Board found that your misconduct, as evidenced by your NJP, outweighed the mitigation factors. In making this finding, the Board considered the seriousness of your misconduct and determined it constituted a significant departure from that expected of a Sailor. Therefore, the Board found that your OTH characterization remains appropriate. 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, the Board determined that your request does not merit relief at this time.

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 is attached 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,

5/6/2022

