



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: 2746-22

Ref: Signature Date

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Dear █:

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.

A three-member panel of the Board, sitting in executive session, considered your application on 6 May 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 for submarine duty and commenced active duty on 24 October 2019. Your pre-enlistment physical on 13 August 2019 and self-reported medical history noted no psychiatric or neurologic conditions or symptoms. Following the completion of initial recruit training, on 24 July 2020, you graduated from Nuclear Field "A" School.

You received a "special" performance evaluation for the period ending 21 September 2020. The evaluation noted the following:

Reason for Report: Disenrolled from training being reviewed for possible separation. Disenrolled during the 1st week of training from the Nuclear Power Program for administrative reasons.

Following your disenrollment from training, you voluntarily submitted a written request for an administrative discharge in lieu of trial by court-martial. Prior to submitting this voluntary discharge request, you would have conferred with a qualified military lawyer, at which time you

were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. You would have also expressly acknowledged and understood that with an Other Than Honorable conditions (OTH) discharge you would be deprived of virtually all rights as a veteran under both federal and state legislation, and you may encounter substantial prejudice in civilian life in situations wherein the type of service rendered in any branch of the armed forces or the character of the discharge therein may have a bearing. As a result of this course of action, you were spared the stigma of a court-martial conviction for your offense(s), as well as the potential sentence of confinement and the negative ramifications of receiving a punitive discharge from a military judge. Ultimately, on 15 February 2021, you were separated from the Navy with an OTH discharge characterization and assigned an RE-4 reentry code.

Unfortunately, the administrative separation in lieu of trial by court-martial documents are not in your record. However, the Board relied on a presumption of regularity to support the official actions of public officers, and given the narrative reason for separation and corresponding separation and reentry codes as stated on your Certificate of Release or Discharge from Active Duty (DD Form 214), the Board presumed that you were properly processed and discharged from the Navy for a serious military or civilian offense. In blocks 25 through 28 of your DD Form 214 they state: "MILPERSMAN 1910-106," "KFS," "RE-4," and "In Lieu of Trial by Court Martial," respectively. Such DD Form 214 notations collectively refer to a discharge involving a written request for an administrative separation 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: (a) you were accused and immediately jailed when there was no proof of the crime and held for four months without formal sentencing, (b) you were removed from the Navy Nuclear Program based on a crime you did not commit with no evidence, which led to an OTH characterization, (c) your OTH is impeding your ability to find stable work and finance your education, and (d) you are currently enrolled in the █. However, based upon this review, the Board still concluded that given the totality of the circumstances your request does not merit relief.

The Board unequivocally did not believe that your record was otherwise so meritorious to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board also determined that your misconduct presumably constituted a significant departure from the conduct expected of a Sailor and that your misconduct was intentional and willful and indicated you were unfit for further service. The Board also noted that you did not provide any convincing evidence to corroborate your contentions that you were jailed without proof or evidence of an offense being committed by you. Moreover, the Board noted that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions. Finally, the Board considered that you voluntarily submitted a request to be discharged in lieu of trial by court-martial with the understanding that you would receive an OTH characterization of service.

Additionally, the Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. Moreover, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating VA benefits, or enhancing educational or employment opportunities. The Board carefully considered any matters submitted regarding your post-service conduct and accomplishments, however, even in light of the Wilkie Memo and reviewing the record holistically, the Board still concluded that given the totality of the circumstances your request does not merit relief. Accordingly, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your misconduct clearly merited your receipt of an OTH.

Finally, as previously discussed, the Board relied on a presumption of regularity to support the official actions of public officers despite the lack of administrative separation documents in your record. In the absence of substantial evidence to rebut the presumption, to include evidence submitted by you, the Board presumed that you were properly processed for separation and discharged from the Navy. In the end, the Board concluded that you received the correct discharge characterization based on your circumstances, and that such OTH characterization was in accordance with all Department of the Navy directives and policy at the time of your discharge.

If you have no new matters to submit and were discharged after December 20, 2019, you have the right to appeal the Board's denial of your requested upgrade of the characterization of your discharge or dismissal to the Department of Defense Discharge Appeal Review Board (DARB). Pursuant to Section 1553a of Title 10 of the United States Code, the DARB's review is limited to conducting a final review of a request for an upgrade in the characterization of a discharge or dismissal. All DARB requests must be submitted through the Air Force Review Board Agency eApplication Portal (<https://afriba-portal.cce.af.mil>). The DARB will have access to and review the facts of your previous Board case. Please do not submit any new evidence in support of your request to the DARB as this will result in their administrative closure of your application. The DARB is the highest administrative level of appeal for a request to upgrade the characterization of a discharge or dismissal and their decisions are final.

Sincerely,

5/14/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]