



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: 4080-22
Ref: Signature Date

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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 June 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 16 November 1996. On 5 February 1999, you received non-judicial punishment (NJP) for two specification of unauthorized absence (UA). You were counseled, on 9 February 1999, regarding your NJP for UA, and you were notified further deficiencies may result in the administrative separation proceedings. On 10 September 1999, you began a period of UA and missed ship's movement on 14 September 1999 and 22 September 1999. You were later declared a deserter on 11 October 1999 but surrendered on 29 November 1999. On 13 December 1999, you submitted a request for separation in lieu of trial by court martial for your period of UA from 10 September 1999 to 29 November 1999. On 15 September 1999, the discharge authority approved your request for separation. On 23 December 1999, you were discharged with Other Than Honorable (OTH) characterization of service by reason of 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, your desire to upgrade your characterization of service and contentions that your grandmother was terminally ill, that you were not allowed to visit her by taking leave, and that you went UA to see her. In addition, you assert there were no other negative instances during your service and, since your discharge, you have been a licensed practical nurse. Finally, you expressed regret for your actions and argue that you were young at the time. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

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 request for discharge in lieu of trial by court-martial, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct that included a long-term UA and two incidents of missing ship's movement. The Board also considered the likely negative impact your conduct had on the good order and discipline of the command. Further, the Board was not persuaded by your arguments in mitigation based on the fact you were involved in two separate incidents of UA during your active duty service. Finally, the Board felt you already received a large measure of clemency based on the Navy's decision to accept your request to be administratively discharged in lieu of trial by court-martial. In the Board's opinion, based on your prior history of misconduct, you had a high likelihood of receiving a punitive discharge if you had been subjected to a court-martial. 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. After applying liberal consideration, 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,

7/15/2022

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Executive Director
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