



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

██████████
Docket No: 4116-22
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 you did not file your application 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 29 July 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 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 the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Navy and began a period of active duty on 27 June 1989. You had two periods of unauthorized absence (UA) from 18 July 1990 to 25 July 1990 then from 14 August 1990 to 25 September 1990, the latter of which included missing movement on 16 August 1990. Your second UA was terminated with your admission to a civilian emergency room for treatment of multiple gunshot wounds inflicted during an altercation. On 3 February 1991, you received nonjudicial punishment (NJP) for prior violations of Article 86 (UA) and Article 87 (missing movement). Subsequently, you committed two additional periods of UA from 14 to 20 August 1991 and from 1 December 1991 to 14 April 1992, during which you again missed your ship's movement. Following your return from that fourth period of UA, you requested administrative separation in lieu of trial by court-martial and, upon approval of your request, were discharged on 10 June 1992 with an Other Than Honorable (OTH) characterization of service.

You previously applied to this Board for a discharge upgrade. Your request was denied on 13 June 2018 after the Board determined your discharge was issued properly and was without error or injustice.

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 you experienced issues after your deployment which may have led to your discharge. However, you assert that you have become a better citizen than you were during the time of your military service. 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 court-martial, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct that included long-term UAs and two missed ship's movements. Further, the Board considered the likely negative effect your conduct had on the good order and discipline of the command. Finally, the Board determined that you already received a large measure of clemency when the Navy agreed to administratively separate you in lieu of trial by court-martial; thereby sparing you the stigma of a court-martial conviction and likely punitive discharge. 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 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,

8/11/2022

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Executive Director
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