



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

█  
Docket No: 4148-22

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 reconsideration 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 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 U.S. Navy and commenced active duty on 1 November 1972. Your pre-enlistment physical examination, on 30 October 1972, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms.

On 8 August 1974, you were arrested and incarcerated by civilian authorities in █  
█ awaiting trial on charges of second degree murder and first degree assault to murder. On such date, the Navy placed you in an unauthorized absence (UA) status given your incarceration and being absent from your appointed place of duty. Being placed in a UA status was significant because the Department of the Navy treats civilian incarceration as "time lost," and each day incarcerated and thus in a UA status was added onto the end of your enlistment contract day-for-day, and accordingly did not count towards accruing active duty service for retirement eligibility.

On 14 April 1975, you were convicted pursuant to your guilty pleas in the Criminal Court for ██████████ of both voluntary manslaughter and first degree assault to murder. Your sentences for each offense were adjudged to run consecutively.

Following your felony conviction, on 6 May 1975, you were notified of administrative separation proceedings by reason of misconduct due to a civilian conviction. You elected your right to request an administrative separation board (Adsep Board).

On 17 July 1975, an Adsep Board convened in your case on board Naval Air Station, ██████████ ██████████. Although you were not present due to your civilian incarceration, at the Adsep Board, you were represented by a Navy Judge Advocate. Following the presentation of evidence and witness testimony, the Adsep Board members unanimously recommended that you be separated from the Navy with an undesirable discharge (a.k.a. an under Other Than Honorable (OTH) conditions characterization of service). Your available service record documents indicated your military defense counsel did not submit a post-Adsep Board letter of deficiencies for the Separation Authority's consideration. Your separation physical examination, on 21 August 1975, and self-reported medical history both noted no psychiatric or neurologic issues, conditions, or symptoms. Ultimately, on 5 September 1975, you were separated in absentia from the Navy for misconduct due to a civilian conviction with an OTH discharge characterization.

On 10 June 1977, the Naval Discharge Review Board (NDRB) denied your initial application to upgrade your discharge. On 4 June 1979, the NDRB again denied your upgrade application. On 19 May 2009, this Board denied your petition for 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 characterization and contentions that: (a) on active duty you were an upstanding Sailor and moving forward with your career in a positive manner, and (b) you loved serving your country and were proud of being in the Navy. 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 civilian conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct that included the loss of life. Further, the Board took into consideration the discrediting effect your misconduct had on the Navy. Further, the Board did not believe that your record was otherwise so meritorious as 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 determined that characterization under OTH conditions is generally warranted for misconduct and is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor. The Board determined that the record clearly reflected your depraved heart misconduct involving the loss of life was intentional and indicated you were unfit for further service. 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.

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. Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your egregious misconduct clearly merited your receipt of an OTH, and that such separation was in accordance with all Department of the Navy directives and policy at the time of your discharge. Therefore, even in light of the Wilkie Memo and reviewing the record holistically, 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.

In the absence of sufficient new evidence for reconsideration, the decision of the Board is final, and your only recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

Sincerely,

8/3/2022

[REDACTED]  
Deputy Director  
[REDACTED]