



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

█
Docket No: 4185-22
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 8 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 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 and began a period of active duty on 23 March 2000. While assigned to the █, you went into a period of unauthorized absence (UA). After returning from your UA, you were joined to the Transient Personnel Unit pending disciplinary action. Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary (as is the case at present), will presume that they have properly discharged their official duties. Your Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that you were separated from the Navy on 5 August 2002 with an Other Than Honorable (OTH) characterization of service, your narrative reason for separation is "In Lieu of Trial by Court-Martial," your separation code is "KFS," and your reenlistment code is "RE-4." Based on your record, after consulting with qualified counsel, you submitted a request to be separated in lieu of trial by court-martial upon your return from your period of UA.

You previously applied for consideration by the Naval Discharge Review Board (NDRB) in 2003 seeking to return to active duty and contending that your unauthorized absence had nothing to do with your military duties, explaining that you had begun to have problems because your spouse quit her job to relocate to your duty station only to discover that there was a 6-12 month waiting list for government housing and you subsequently went UA to get a job back home after you returning from workups due to your spouse having problems with your pending deployment. You also explained that problems arose making it difficult every time you attempted to return to the Navy to complete your 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. These included, but were not limited to, your desire to upgrade your discharge and the notification you received from NDRB, on 5 May 2022, that your previous application might fall within the class covered under the settlement in *Manker, et.al. v. Del Torro*, Case No.3:18- cv- 00372. 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 request to be separated in lieu of trial by court-martial, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact it had on the good order and discipline of your command. Further, the Board considered that the Manker settlement applied to certain cases involving guidance applicable to discharges for which post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), military sexual trauma (MST), or other mental health (MH) conditions might have affected the member's conduct which led to the discharge. The Board noted that even though you submitted the notification received from NDRB with your application, you did not previously contend any of the above conditions in your application to NDRB nor did you contend any such conditions in your current application to the Board. Finally, the Board considered that you already received a large measure of clemency based on the Navy's decision to accept your request to be administratively separated in lieu of trial by court-martial. As a result, the Board determined you likely avoided significant punishment that may have included confinement, forfeitures, and a punitive discharge. As previously discussed, the Board relied on the presumption of regularity to determine your administrative separation processing was appropriate and found no evidence to overcome the presumption. 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, _____

7/22/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]