



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: 4843-22

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 20 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 Navy and commenced active duty on 10 December 1996. You pre-enlistment physical examination and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. On 8 April 1997, you reported for your first duty station in █.

On 13 November 1997, you received non-judicial punishment (NJP) for both failing to obey a lawful order/regulation, and two separate specifications of unauthorized absence (UA). You did not appeal your NJP.

On 5 December 1997, you submitted a voluntary written request for an administrative discharge under Other Than Honorable conditions (OTH) in lieu of trial by court-martial for two separate

specifications of the wrongful use of a controlled substance. Prior to submitting this voluntary discharge request, you 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. In the text of your request, you expressly admitted that you were guilty of the misconduct as charged. You acknowledged that if your request was approved that an OTH characterization was authorized. As a result of this course of action, you were spared the stigma of a court-martial conviction for your misconduct, as well as the potential sentence of confinement and the negative ramifications of receiving a punitive discharge from a military judge. You also expressly acknowledged and understood that with an OTH discharge you would be deprived of virtually all rights as a veteran, 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. Ultimately, your request was approved and, on 23 January 1998, you were separated from the Navy with an OTH discharge and assigned an RE-4 reentry code. In this regard, you were assigned the correct characterization and reentry code based on your factual situation.

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) your discharge was inequitable and should be upgraded to Honorable in the interest of justice because your unjust experience of being prevented from positions and attaining citizenship mitigated your decision to go AWOL, (b) your discharge should be upgraded to Honorable in the interest of justice because you faced unfair treatment by your superiors, as opposed to support for achieving citizenship, (c) your discharge should be upgraded to Honorable in the interest of justice because Honorable discharges do not require perfect service records, and (d) your discharge should be upgraded to Honorable in the interest of justice because there have been policy changes since your service that support relief. For purposes of clemency consideration, the Board noted you provided supporting documentation describing your completion of bible training for church leaders and 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 and the fact your misconduct included two drug offenses. Further, the Board unequivocally did not believe that your record was otherwise so meritorious to deserve a discharge upgrade or other conforming changes to your DD Form 214. 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 constituted a significant departure from the conduct expected of a Sailor and that the record clearly reflected your misconduct was intentional and willful 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.

Additionally, the Board observed and noted that the Commanding Officer (CO) of Naval Station ██████████ endorsement of your discharge request, dated 15 December 1997, described a set of facts and circumstances in stark contrast to your stated contentions and proffered arguments. The CO stated:

FR ██████████ formally FR ██████████ is one of the greater disappointments that I have encountered in the course of my Navy career. He is a person of enormous potential who has preferred to squander his talents on malicious pursuits rather than [sic] undertake the legitimate challenges of which the Navy affords. His chain of command has expended great time and resources trying to turn this Sailor around. Informal counseling, personal attention and EMI have all failed to make a difference. Despite all this no one in his chain of command, my XO included wanted to give up on this young man. I awarded him 30 days at the Correctional Custody Unit in hopes of finally getting through and turning him around. Unfortunately FR ██████████ has refused to take advantage of this opportunity, just as he did all previous attempts to reach him. Within the first two weeks of his sentence at CCU he had been so disruptive and utterly disdainful of rules and authority that I received a personal request from the Commanding Officer of the Brig that he be withdrawn from the CCU program for lack of rehabilitative potential and the detrimental effect he was having on the other Sailors. The timing of this request coincided with the receipt of positive urinalysis results. Consequently FR ██████████ was transferred to pretrial confinement.

FR ██████████ conduct has been motivated entirely by his desire to leave Naval service. He has wanted to get out of the Navy ever since getting in, when he failed to win a discharge through other means he became determined to get out via the disciplinary system. Prior to this command's knowledge of his drug use, FR ██████████ stood before me at NJP to answer for his violations of Articles 86(2) and 92. When given the opportunity to speak to the charges, he chose instead to ask for an immediate discharge, and became despondent when I told him that he would not receive one. The behavior later exhibited at CCU is analogous to a small child's tantrum when he does not get what he wants. FR ██████████ felt that if he caused a large enough ruckus at CCU he would get the discharge that eluded him at mast. The use of drugs during two periods of unauthorized absence in my opinion are not indicative of a substance abuse problem, merely a poorly conceived means to gain release from his service contract, a "sea lawyer's" solution.

This command is in no way soft on drugs. My recommendation for acceptance of the OTH in lieu offer is based solely on the fact that the Navy has nothing to gain by a court martial of this individual. On FR ██████████ side of the equation, I do not

feel that he will learn a thing from the experience. He does not desire to serve the Navy or this country, his intentions are to leave the Navy by whatever means possible and return home. He is bright but immature. Unable to see beyond himself and his ego he has no respect for the Navy, discipline or the rules, and posses [sic] no desire to gain any. His needs and his needs alone are paramount in his mind. This person has been a constant disruptive and damaging influence to good order and discipline, corrupting all he has had contact with. He will continue to be such a problem until he is removed entirely from the Navy. He needs to grow up and is unwilling to do so here.

We have wasted so much of the taxpayers' money, and good Sailors' time on an individual contemptible of both. At the time of this letter FR ██████████ has been in pretrial confinement since 01 Dec 97. To expend the further resources necessary to court martial this individual, and then feed and clothe him during his sentence would be tantamount to waste on our part. Though it is my sincere hope that FR ██████████ eventually finds his way in life, the longer he remains in the Navy the greater the amount of trouble he will put himself in and draw others into. Both FR ██████████ and the Navy are better served by sending this individual out now with the time he has already served in the brig, and an other then [sic] honorable characterization.

Additionally, the Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average calculated from your available performance evaluations in conduct (proper military behavior) during your enlistment was 1.0. Navy regulations in place at the time of your discharge required a minimum trait average of 2.0 in conduct for a fully honorable characterization of service. The Board concluded that your conduct marks during your active duty career were a direct result of your serious misconduct which further justified your OTH characterization of discharge and RE-4 reentry code.

The Board also noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge or reentry code to be automatically upgraded after a specified number of months or years. Lastly, absent a material error or injustice, the Board generally will not summarily upgrade a discharge or change a reentry code solely for the purpose of facilitating veterans' benefits, or enhancing citizenship, educational or employment opportunities. Accordingly, the Board determined that there was no impropriety or inequity in your discharge and reentry code, and the Board concluded that your serious misconduct clearly merited your receipt of an OTH. In the end, the Board concluded that you received the correct discharge characterization, narrative reason for separation, separation code, and reentry code based on the totality of your circumstances, and that such action was in accordance with all Department of the Navy directives and policy at the time of your discharge. The Board carefully considered any matters submitted regarding your character, post-service conduct, and personal/professional accomplishments, however, even in light of the Wilkie Memo and reviewing the record holistically, the Board still concluded there is insufficient 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,

7/26/2022

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Executive Director
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