



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

█  
Docket No: 4954-22

Ref: Signature Date



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 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 Navy and entered active duty on 24 August 1994. Your pre-enlistment physical, on 4 January 1994, and self-reported medical history noted no psychiatric or neurologic conditions or symptoms. No issues with eyes and/or vision were noted at your examination as well.

While still in recruit training, on 14 November 1994, you commenced a period of unauthorized absence (UA). On 15 December 1994, your command declared you to be a deserter. Your UA terminated after approximately seventy-one days with your surrender to military authorities on or about 24 January 1995.

On 2 February 1995, you received non-judicial punishment for your UA. You did not appeal your NJP.

On 22 March 1995, you commenced another period of unauthorized absence (UA). On 25 April 1995, your command declared you to be a deserter. Your UA terminated, after approximately 911 days, with your arrest by civilian authorities on 18 September 1997.

Following your return to military control, you voluntarily submitted a written request for an administrative discharge in lieu of trial by court-martial for your long-term UA. Prior to submitting this voluntary discharge request you would have 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. You would have also expressly acknowledged and understood that, with an under Other Than Honorable (OTH) conditions discharge, you would be deprived of virtually all rights as a veteran under both federal and state legislation, 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. As a result of this course of action, you were spared the stigma of a court-martial conviction for your long-term UA, as well as the potential sentence of confinement and the negative ramifications of receiving a punitive discharge from a military judge.

In the interim, your separation physical examination, on 15 October 1997, at ██████████ ██████████ and self-reported medical history both noted no issues, conditions, or abnormalities with your eyes and vision. You expressly answered “yes” to having vision in both eyes on your medical history. Ultimately, on 27 October 1997, you were separated from the Navy with an OTH discharge and assigned an RE-4 reentry code.

Unfortunately, your administrative separation in lieu of trial by court-martial documents are not in your record. However, the Board relied on a presumption of regularity to support the official actions of public officers, and given the narrative reason for separation and corresponding separation and reentry codes as stated on your Certificate of Release or Discharge from Active Duty (DD Form 214), the Board presumed that you were properly processed and discharged from the Navy for your long-term UA. In block 29 your DD Form 214 it states “Time Lost” was “22MAR95-17SEP97,” a period lasting well over twenty-nine months. Time Lost describes periods on active duty spent either in a UA status or while serving in military confinement. In blocks 25 through 28 of your DD Form 214 it states “MILPERSMAN 3630650,” “KFS,” “RE-4,” and “In Lieu of Trial by a Court Martial,” respectively. Such DD Form 214 notations collectively refer to a discharge involving a written request for an administrative 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: (a) you were separated from ██████████ before it closed under a “general-medical” separation, (b) you lost the vision in your right eye, (c) your records and separation from ██████████ were supposed to be medical-general as you went home awaiting your DD 214, but it never came because ██████████ closed and your records were not finished or probably lost, and (d) you are not in possession of your records

and you lost them in a major flood. 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 to be separated in lieu of trial by court-martial, outweighed these mitigating factors. First and foremost, the Board took issue with your contentions about a possible medical-general separation and your purported vision loss. The Board noted that in no uncertain terms were you ever being considered and/or processed for a medical discharge by the Navy. The record clearly indicated you first went into a UA status while still in your initial training at █. Less than two months after your return to █, on 22 March 1995, you commenced a second UA and remained in a UA status for over 900 days. Additionally, your Navy medical records clearly indicated you never had any medical issues with your vision and never lost sight in either one of your eyes while on active duty.

The Board unequivocally did not believe that your record was otherwise so meritorious 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 during your military service. The simple fact remained is that you left the Navy while you were still contractually obligated to serve and you went into a UA status for over 900 days without any legal justification or excuse. The Board concluded that, if anything, the Navy granted you significant clemency by not court-martialing you for your long-term UA, which almost certainly would have resulted in a punitive discharge. The Board 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.

The Board noted that there is no provision of federal law or in Navy directives or regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. Moreover, 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. Based on these factors, the Board concluded that you received the correct discharge characterization based on your overall circumstances and that such characterization 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 still concluded there was 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.

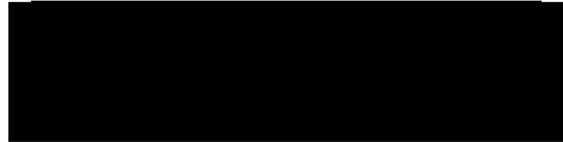


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You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, 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, \_\_\_\_\_

8/8/2022



Executive Director

Signed by: \_\_\_\_\_