



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: 7004-22
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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 14 November 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 this 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 United States Navy and commenced a period of active duty on 9 March 1990. From 20 September 1991 until 1 October 1991, you were absent without authorization from your appointed place of duty and missed ships movement. On 8 October 1991, you received non-judicial punishment (NJP) for violating Uniform Code of Military Justice Article 90, for "willful disobedience of superior commissioned officer." You were awarded a reduction in rank to E-1, restriction and extra duties, and forfeitures of pay. You did not appeal your NJP.

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, 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 9 January 1992 with an Other Than Honorable (OTH) characterization of service, your narrative reason for separation is "Separation in Lieu of Trial by Court Martial," your separation code is "KFS," and your reenlistment code is "RE-4."

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 desire to upgrade your discharge characterization, (b) your contention that “receiving a dishonorable discharge for refusing to paint a ship is unfair,” and (c) your contention that there was a typo or misprint by military officials. For purposes of clemency and equity consideration, the Board noted that you did not provide advocacy letters or documentation of post-service accomplishments.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs and your significant period of unauthorized absence, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it involved missing ship’s movement, which has a negative impact on mission accomplishment and on the good order and discipline of your command. The Board determined that such misconduct is contrary to the Navy core values and policy, and places an undue burden on fellow shipmates. Further, the Board also noted that there is no provision of federal law or in Navy regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. As a result, the Board determined your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization. However, the Board did highlight that an OTH discharge is administrative in nature and is not a “Dishonorable Discharge,” which is punitive in nature and can only be awarded as part of a court martial. 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 an upgraded characterization of service as a matter of clemency or equity. Accordingly, given the totality of the circumstances, the Board determined 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,

11/30/2022

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Executive Director

Signed by: █