



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: 7661-22

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 28 October 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).

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Navy and entered active duty on 1 November 2000. Your pre-enlistment physical examination, on 21 July 2000, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. On 4 March 2001, you reported for duty onboard █ in █

On 16 April 2001, you commenced a period of unauthorized absence (UA). While in a UA status you missed your ship's movement on 18 April 2001. Your UA terminated after approximately eighteen days with your surrender to military authorities on or about 4 May 2001.

On 17 May 2001, you commenced another period of UA. Your UA terminated after approximately seventy-five days with your surrender to military authorities on or about 31 July 2001.

On 1 August 2001, you commenced a third UA. Your UA terminated after approximately twelve days with your surrender to military authorities on or about 13 August 2001.

On 17 August 2001, you commenced a fourth UA. On 17 September 2001, your command declared you to be a deserter. Your UA terminated after approximately 208 days with your surrender to military authorities on or about 13 March 2002.

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 UAs. Prior to submitting this voluntary discharge request you presumably 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 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 multiple UAs, as well as the potential sentence of confinement and the negative ramifications of receiving a punitive discharge from a military judge. Ultimately, on 2 May 2002 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 UAs. In block 29 your DD Form 214 it states "Time Lost" was "01AUG17-02MAR13," a period lasting well over seven 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 "MPM 1910-106," "KFS," "RE-4," and "In Lieu of Trial by 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 your contentions that, at the time, you were dealing with a divorce and a new baby, and the stress from your situation caused you to be discharged with an OTH. 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. 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 on multiple occasions totaling approximately 313 days without any legal justification or excuse. The Board concluded that, if anything, the Navy granted you significant clemency by not court-martialing for your cumulative UAs, which almost certainly would have resulted in a Bad Conduct Discharge at a Special Court-Martial. 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. Accordingly, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your serious misconduct clearly merited your receipt of an OTH. Even in light of the Wilkie Memo and reviewing the record holistically, the Board still concluded that insufficient evidence of an error or injustice exists to warrant 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,

11/5/2022

[REDACTED]

Executive Director

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