



**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: 8291-22  
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 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 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 12 October 1977. During your enlistment processing, you disclosed an arrest for being a runaway but an enlistment waiver was not required. After commencing submarine training, you were dropped from Naval Submarine School, on 9 January 1978, for lack of interest and motivation.

On 8 May 1978, you received your first nonjudicial punishment (NJP) for missing the movement of █. On 15 May 1978, you were found guilty at a summary court-martial (SCM) of an unauthorized absence (UA) totaling 34 days. On 19 July 1978, you received a second NJP for another period of UA, followed by a third NJP, on 8 August 1978, for being UA from your appointed place of duty, two specifications of disobeying a lawful order, and using reproachful words. On 12 December 1978, you received a fourth NJP for a four-day UA and

missing ship's movement. On 9 July 1979, you were found guilty at a special court-martial (SPCM) of two specifications of UA totaling 57 days. You were sentenced to confinement at hard labor for three months and to forfeit \$250.00 pay per month for three months. On 3 December 1979, you were issued an administrative counseling documenting your deficiencies yet retaining you in the naval service and advising you that any further misconduct may result not only in disciplinary action but in processing for administrative discharge.

On 14 April 1980, you requested a good of the service (GOS) discharge with an undesirable discharge characterization of service in lieu of facing a trial by court-martial. As part of submitting this voluntary discharge request, you conferred with a qualified military lawyer, were advised of your rights, and warned of the probable adverse consequences of accepting such a discharge. As part of this discharge request, you acknowledged that your characterization of service upon discharge would be an Other Than Honorable (OTH). On 22 April 1980, the separation authority approved your request for a GOS discharge. On 5 May 1980, you were discharged with an OTH.

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 characterization and your contentions that, (1) you are currently homeless with multiple health problems that prevent you from working at this time, (2) your income is not enough to afford housing without a subsidy, (3) approving your request will allow you to become eligible under the VASH (veterans affairs supportive housing) eligibility through the Compassionate Care Act, and (4) the Navy authorized you to be "out to the local police but then you were considered AWOL and discharged with an OTH." For purposes of clemency and equity consideration, the Board noted you submitted an advocacy letter.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your SCM, SPCM, five NJPs, and GOS request, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. The Board noted that you were offered multiple opportunities to correct your behavior but continued to commit misconduct. Further, contrary to your contention that implied you were wrongfully discharged, the Board noted that your record of misconduct fully supports the Navy's decision to administratively process you. Additionally, 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. Finally, the Board determined that you already received a large measure of clemency when the Navy agreed to administratively separate you in lieu of trial by court-martial; thereby sparing you the stigma of a court-martial conviction and likely punitive discharge. 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. While the Board empathizes with your current situation, 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 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 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,

1/3/2023

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Executive Director

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