



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: 2623-22
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 11 May 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 entered active duty with the Navy on 24 October 1974. According to the information in the record, during the period from 19 March to 12 August 1975, you received two non-judicial punishments (NJP) for failure to go to appointed place of duty, unauthorized absence (UA) totaling 13 days, and missing ship's movement. You submitted a written request for a good of the service (GOS) discharge in lieu of trial by court-martial for being in an UA status for 149 days. Although the Board lacked your entire service record, the Board relied on a presumption of regularity that prior to submitting this 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. Your request was granted and your commanding officer (CO) was directed to issue an Other Than Honorable (OTH) discharge for the good of the service. On

24 February 1977, you were so discharged. As stated previously, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to rebut the presumption, to include evidence submitted by the Petitioner, the Board presume that you were properly discharged from the Navy.

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 and contentions that your mistakes were made due to family problems. 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 two NJPs and lengthy period of UA that resulted in your GOS discharge, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the negative impact your conduct had on the good order and discipline of your unit. Further, the Board also considered that you already received substantial mitigation of your misconduct since you were spared the stigma of a court-martial conviction, as well as the potential of a punitive discharge, based on the Navy's decision to grant your request for a GOS discharge. As a result, the Board concluded your conduct was a significant departure from that expected from a Sailor and continues to warrant an OTH characterization. The Board did not find 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,

5/20/2022

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Executive Director

Signed by:

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