



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

█
Docket No. 0758-23

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 you did not file your application in a timely manner, the statute of limitation was waived in the interest of justice. A three-member panel of the Board, sitting in executive session, considered your application on 13 March 2023. 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 including 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 commenced a period of service on 1 February 1983. Your enlistment application acknowledged pre-service drug use. On 7 June 1983, you began a period of unauthorized absence (UA) and were declared a deserter on 7 July 1983. You remained absent until your apprehension and return to military control on 11 April 1985. On 15 May 1985, you received a discharge physical, wherein you did not disclose any mental health problems or other issues that would have triggered further evaluation.

Based on the information contained on your Certificate of Release or Discharge from Active Duty (DD Form 214), it appears that you submitted a voluntary written request for an Other Than Honorable (OTH) discharge for separation in lieu of trial (SILT) by court-martial. In the absence of evidence to contrary, it is presumed that prior to submitting this voluntary discharge request, you would have conferred with a qualified military lawyer, been advised of your rights, and warned of the probable adverse consequences of accepting such a discharge. As part of this

discharge request, you would have acknowledged that your characterization of service upon discharge would be an OTH. On 4 June 1985, you were separated from the service in lieu of trial by court martial with an OTH characterization of service and a RE-4 reenlistment code.

Your case was previously reviewed by the Naval Discharge Review Board and was denied relief on 13 May 1988.

The Board carefully considered all potentially mitigating and/or extenuating factors to determine whether the interests of justice warrant relief in your case. These included, but were not limited to: (a) your desire to upgrade your characterization of service, (b) your contention that you were young and never had a premeditated intention to go UA, (c) the fact that you take responsibility for your actions. For purposes of clemency and equity consideration, the Board noted that you did not provide documentation related to your post-service accomplishments or character letters.

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 extensive period of UA and SILT request, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and its impact on the mission. The Board highlighted that you received a discharge in lieu of trial, thereby avoiding the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. The Board felt that the separation authority already granted you clemency by allowing you to separate from the service in lieu of trial by court martial.

In making this determination, the Board considered that your UA began as a mistake during travel to your duty station, and that due to your youth and fear of confinement, you ended up remaining UA instead of returning to military control. The Board also considered the fact that you tried to report your absence to both your recruiter and a chaplain. However, after thorough review of your case, the Board determined the record clearly reflected that your decision to go UA was intentional and willful and demonstrated you were unfit for further service. The Board also determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should otherwise not be held accountable for your actions. The Board concluded that your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization.

The Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. 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 granting you the relief you requested or granting relief 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 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,

3/21/2023

