



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

█  
Docket No. 6045-23  
Ref: Signature Date

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Dear █

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 8 September 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 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 to 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 began a period of active duty, on 28 January 1988, under a Special Warfare diverfarer program contract. The terms of that contract specified that, if your guaranteed program training was stopped because of "failure to meet the Navy's academic or professional standards during any phase" of your training, that you would be reassigned as the needs of the Navy required. To this extent, you were administratively counseled on 11 March 1988 that you were not qualified for your guaranteed assignment due to failure to meet minimum physical requirements for your physical fitness testing. Subsequently, you absented yourself without authority and, on 1 September 1988, you were declared a deserter.

While in a deserter status from your obligated period of service to the Navy, you enlisted in the Army and began a concurrent period of active duty on 25 April 1989. Your Army service included numerous awards as well as combat deployment in support of Operation Desert Storm. After returning from your combat deployment with the Army, you surrendered yourself to military authority at Naval Air Station █ on 11 June 1991. However, by 29 July 1991, you had again absented yourself without authority from a pending disciplinary status, and you

returned to your active service with the Army. On 20 May 1992, while still in a deserter status from your obligated service with the Navy, you were honorably discharged from the Army under a voluntary early separation program.

Approximately 9 months later, on 20 February 1993, you were apprehended by civil authority while still in a deserter status from the Navy, and you were again returned to military control. Pending charges with respect to your desertion and previous unauthorized absence, you voluntarily requested separation in lieu of trial, for which you submitted a personal statement as well as a statement from your spouse. Your detailed military defense counsel endorsed your request on 29 March 1993, outlining your accomplishments and otherwise commendatory performance of duty during your Army combat service, which was considered incident to your request. At the time that your request for discharge was granted under Other Than Honorable (OTH) conditions, Commanding Officer, Transient Personnel Unit, ██████████, specified that your performance and conduct – with respect to your Navy service – did not warrant a more favorable type of discharge.

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 to “Under Honorable Conditions (General)” and to remove the Naval Criminal Investigative Service (NCIS) documentation of your arrest record. You contend that you were never arrested by Navy law enforcement and that your arrest record and discharge have been a constant restraint against your day-to-day business activities and efforts toward professional licensing. With respect to your desertion from your obligated Navy service, you explained that you experienced a hardship situation at the time you entered service and that you “left the Navy, without processing out, and enlisted in the Army” but attempted to clear up the situation caused by your absence by taking leave following your return from your Army combat deployment. You further asserted that your subsequent absence resulted from running out of available leave and needing to return to the Army and complete your service obligation there. You feel that the nature of your discharge and the record of your arrest as a deserter causes confusion in regards to your “true honor and commitment” to being a positive part of the United States. For purposes of clemency and equity consideration, the Board noted you submitted your Navy records, Army records, post-service character letters regarding your support of charitable events and fundraisers as well as your unique business and professional efforts. You also submitted records regarding the denial of your request for a concealed carry permit; of note, email correspondence from NCIS questioned how it was possible for you to have enlisted in the Army while being wanted for desertion from another branch of service.

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 NJPs, 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, as a matter of indisputable fact, your concurrent enlistment into the Army, while still obligated by your Navy contract and in a deserter status, resulted in a fraudulent enlistment. The Board further observed that, after voluntarily returning from your initial period of unauthorized absence (UA), you would have faced significant legal action and likely confinement as well as a potentially adverse discharge. However, you instead deserted from a pending disciplinary status to return to the Army and seek

a voluntary early separation, thereby securing your “Honorable” discharge notwithstanding your fraudulent enlistment as well as your Navy misconduct.

The Board duly considered your combat service in the Army and acknowledged that your UA period was not an effort to avoid your military service obligation in general sense. However, the Board found that your initial UA was motivated by personal reasons; specifically, in your personal statement, you made it clear that: you felt your failure of your fitness test was unfair due to a variety of circumstances other than your own responsibility to meet minimum physical requirements; you believed, albeit erroneously based on the plain language of your signed contract, that your program guaranteed your choice of subsequent duty assignment; and, having learned that you were likely to be reassigned to deck duty aboard a ship, you viewed such an assignment to be beneath you. In light of the latter consideration, the Board additionally found that your immediate pursuit of combat service in the Army further supported the conclusion you clearly wanted to serve – but only on your own terms. With respect to your honorable discharge from the Army, aside from the fact that it was already considered at the time of your discharge, the Board found it unpersuasive with respect to your Navy service. Rather, the Board concluded that you were not only fortunate to secure a fraudulent enlistment while in a deserter status, but extraordinarily lucky to have returned from your period of UA, again deserted, and then attained an Honorable voluntary early separation from the Army all in spite of your deserter status. Likewise, although the Board favorably considered your post-discharge accomplishments, the Board concluded that your fraudulently procured “Honorable” discharge from the Army significantly furthered those efforts notwithstanding your OTH Navy discharge. Finally, the Board also noted that the misconduct that led to your request to be discharged in lieu of trial by court-martial was substantial and, more likely than not, would have resulted in a punitive discharge and extensive punishment at a court-martial. Therefore, the Board determined that you already received a large measure of clemency when the convening authority 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 service member and continues to warrant an OTH characterization. While the Board carefully considered the evidence you submitted in mitigation, 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. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

With respect to your request to change your arrest record, the Board noted that records of civilian arrests, as well as the NCIS documentation related to reports of those arrests, are beyond the scope of the Board’s grant of authority to correct. Therefore, the Board took no action on this aspect of your application.

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 is attached 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,

9/29/2023

[REDACTED]

Executive Director

Signed by: [REDACTED]