



**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. 6369-23  
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 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 November 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, to include the Under Secretary of Defense Memo of 20 September 2011 (Correction of Military Records Following Repeal of 10 U.S.C. 654) and 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 31 July 1974. On 29 June 1976, you commenced a period of unauthorized absence (UA) that ended in your surrender on 2 August 1976. On 18 August 1976, you commenced a second period of UA, which also ended in your surrender, on 11 January 1977. On 3 March 1977, you were administratively separated from the Navy with an Other Than Honorable (OTH) discharge, your narrative reason was "For the Good of the Service – in lieu of trial by court-martial," and your separation code was "KFS."

Unfortunately, the documents related to your administrative separation are not in your official military personnel file (OMPF). In such cases, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary (as in your case), will presume they have properly discharged their official duties.

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 change your discharge character of service and contentions that: (1) you were advised by the Navy to sign off on a gay writ without seeing the final documentation, (2) your discharge was wrongful, and (3) your discharge was done with prejudice against gays. Additionally, the Board noted you checked the "Sexual Assault/Harassment" box on your application, and stated your separation related to prejudice against homosexuals, but you did not provide evidence or amplifying information in support of your claims. For purposes of clemency and equity consideration, the Board noted you provided no advocacy letters or documents supporting your post-service activities or accomplishments.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your two lengthy periods of UA, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found your conduct showed a complete disregard for military authority and regulations. The Board also considered the negative impact your conduct likely had on the good order and discipline of your unit. Finally, while the Board considered your claim that you were discharged as a result of your homosexual orientation, the Board noted your discharge was due to your request to be discharged in lieu of trial by court-martial. Therefore, absent evidence that you were discharged based on your sexual orientation, the Board concluded you do not qualify for relief under existing guidance related to the repeal of DADT. 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. 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 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 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,

11/19/2023

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