



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

█
Docket No. 7618-23

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 submitted within the statute of limitations, the Board found it in the interest of justice to review your request. A three-member panel of the Board, sitting in executive session, considered your application on 25 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 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 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 United States Navy and commenced a period of active duty on 20 September 1995. On 22 June 1996, you were absent without authorization from your appointed place of duty. Prior to your enlistment, you were involved in a motor vehicle accident and were subsequently diagnosed with chronic lower back pain. On 23 October 1996, a Medical Board reviewed your case and recommended that you not return to full duty. They referred your case to a Physical Evaluation Board (PEB) for review and adjudication.

However, on 15 November 1996, you began a period of unauthorized absence (UA) from your unit, and remained absent until 4 February 1997. On 11 February 1997, you were found guilty at Summary Court-Martial (SCM) of violating Uniform Code of Military Justice (UCMJ) Article 86, for the 81-day period of UA. You were sentenced to 24 days of confinement and reduction in rank to E-1.

As a result, on 6 March 2007, you were notified that you were being processed for an administrative discharge by reason of misconduct due to commission of a serious offense (COSO) with an Other Than Honorable (OTH) characterization of service. You waived your right to consult with counsel and your right to present your case at ADSEP board. On 24 March 1997, you were discharged from the Navy due to your misconduct and assigned an OTH characterization of service and an RE- 4 reentry code.

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: (1) your desire to change your discharge characterization, narrative reason for separation, and reentry code, (2) your assertion that you thought that you were on authorized bedrest following your medical board because your command was checking on your welfare during that period, and (3) your belief that an OTH discharge would still allow him to access benefits such as the GI Bill, home loan, and disability benefits. For purposes of clemency and equity consideration, the Board noted that you provided background checks and a summary of your post-service accomplishments.

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 SCM conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it involved an extended period of UA. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command. The Board determined that such misconduct is contrary to the Navy core values and policy, and places an undue burden on fellow shipmates. The Board felt that your belief that you were on authorized bedrest was unreasonable. Specifically, the Board highlighted that the medical board did not place you on convalescent leave, and actually recommended that you stay active with low-impact exercise. You also did not raise any concerns about your misunderstanding regarding your convalescence versus UA status during your separation processing and, instead, waived your right to present such matters at an ADSEP board. The Board also felt that your misunderstanding of the ramifications of an OTH discharge could have been avoided if you had elected your right to speak with counsel prior to waiving your ADSEP board. A characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a service member. The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade, a change to your narrative reason for separation, or a change to your reentry code.

Lastly, 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. While the board commends your post-service accomplishments, it determined that there was no impropriety or inequity in your discharge and concluded that your misconduct clearly merited your receipt of an OTH. 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,

10/11/2023

