



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

█
Docket No. 8154-23
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 13 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 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 23 February 2000. On your enlistment application, you acknowledged pre-service misconduct, to include criminal mischief and numerous moving violations.

Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, 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, will presume that they have properly discharged their official duties. Your Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that you were separated from the Navy on 22 October 2003 with an Other Than Honorable (OTH) characterization of service, your narrative reason for separation is "In Lieu of Trial By Court Martial," your separation code is "KFS," and your reenlistment code is "RE-4."

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 upgrade your discharge characterization, (2) your contention that “during deployment [USS Enterprise]” you were being treated for symptoms of Post-Traumatic Stress Disorder (PTSD), and (3) your explanation that “this should be corrected because it has already been changed wrong never served USMC.” Additionally, the Board noted you checked the “PTSD” box on your application but chose not to respond to the Board’s 5 October 2023 letter requesting supporting evidence of your claim. For purposes of clemency and equity consideration, the Board noted that you did not provide advocacy letters or documentation of 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 separation in lieu of trial by court-martial (SILT), outweighed these mitigating factors. In making this finding, the Board concluded that the seriousness of your misconduct could have warranted a punitive discharge. The Board also considered the likely negative impact your conduct had on the good order and discipline of your command. The Board highlighted that to be assigned such a narrative reason for separation, the accused must request a discharge for the good of the service in lieu of trial by court martial. The Board concluded that the separation authority already granted you clemency by accepting your separation in lieu of trial by court martial, thereby allowing you to avoid a possible court martial conviction and/or punitive discharge. The Board determined that a characterization under OTH conditions remains appropriate in your case, as the basis of your separation was the commission of an act/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.

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 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,

11/19/2023

