



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. 256-24
Ref: Signature Date



Dear Petitioner:

This is in reference to your application for correction of your husband's naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of his 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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 21 February 2024. 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 the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice or clemency determinations (Wilkie Memo).

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

Your husband, hereinafter referred to as Petitioner, enlisted in the Navy and began a period of active duty on 13 July 1993. On 26 January 1996, Petitioner received non-judicial punishment (NJP) for unauthorized absence (UA), a period totaling eight days. Additionally, Petitioner was issued an administrative remarks (Page 13) counseling warning documenting his deficiency in poor military performance and conduct as evidenced by his NJP of 26 January 1996 and dereliction in the performance of duties by failing to attain a TLD prior to entering a radiation area. The Page 13 expressly warned Petitioner that any further deficiencies in his performance and/or conduct may result in disciplinary action and administrative separation processing. On

6 November 1996, Petitioner was convicted by a summary court-martial (SCM) of two specifications of UA, totaling 35 days.

Consequently, Petitioner was notified that he was being recommended for administrative discharge from the Navy by reason of misconduct due to pattern of misconduct and commission of a serious offense. Petitioner waived his procedural right to consult with military counsel and to present his case to an administrative discharge board. The commanding officer forwarded Petitioner's administrative separation package to the separation authority (SA) recommending Petitioner's administrative discharge from the Navy with an Other Than Honorable (OTH) characterization of service. The SA approved the recommendation for administrative discharge and directed Petitioner's OTH discharge from the Navy by reason of misconduct due to pattern of misconduct. On 10 January 1997, Petitioner was so discharged.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in this case in accordance with the Wilkie Memo. These included, but were not limited to, your desire to upgrade Petitioner's discharge character of service to Honorable and contentions that: (1) Petitioner enlisted into the Navy to support his mother whom was being abused, (2) Petitioner faced many challenges that he never would never discuss; he kept a lot of his unfair treatment to himself which is the reason why he went AWOL, and (3) Petitioner regretted going AWOL; however, at the time he did not feel safe enough to complete his commitment. Additionally, the Board noted you checked the "PTSD" and "Other Mental Health" box on your application but chose not to respond to the Board's request for supporting evidence of your claims. For purposes of clemency and equity consideration, the Board noted you provided advocacy letters and documentation describing Petitioner's post-service accomplishments.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that Petitioner's misconduct, as evidenced by his NJP and SCM conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of Petitioner's misconduct and concluded his misconduct showed a complete disregard for military authority and regulations. The Board also considered the likely negative impact Petitioner's conduct had on the good order and discipline of his command. Further, the Board found that Petitioner's misconduct was intentional and made him unsuitable for continued naval service. Furthermore, the Board also determined that the evidence of record did not demonstrate that he was not responsible for his conduct or that he should otherwise not be held accountable for his actions. The Board noted Petitioner was provided an opportunity to correct his conduct deficiencies during his service; however, he continued to commit additional misconduct. Finally, the Board noted there was no evidence in the record to substantiate Petitioner's claim of unfair treatment.

As a result, the Board determined Petitioner's 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 submitted in mitigation on behalf of Petitioner and is sorry for your loss, 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 Petitioner's misconduct. 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 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,

3/7/2024

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Executive Director

Signed by: █