



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

█  
Docket No. 6256-23  
Ref: Signature Date

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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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your reconsideration application on 9 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).

You enlisted in the U.S. Navy and began a period of active duty service on 20 July 1978. Your pre-enlistment physical examination, on 14 July 1978, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms.

On 7 September 1978, you received non-judicial punishment (NJP) for unauthorized absence (UA). You did not appeal your NJP. On 18 October 1978, you received NJP for two separate specifications of assault, one of which was an assault upon a security police officer. You did not appeal your NJP. On the same day, your command issued you a "Page 13" retention warning (Page 13), where you acknowledged that further misconduct could result in processing for discharge under other than honorable conditions (OTH).

On 8 November 1978, you received NJP for another UA. You did not appeal your NJP. On 4 January 1979, you commenced a period of UA that terminated on 6 January 1979. On 8 January 1979, you commenced a period of UA that terminated on 8 January 1979.

On 11 January 1979, you commenced another UA. Your UA terminated after approximately 327 days, on 4 December 1979, with your arrest by civilian authorities in █ on charges of resisting arrest, assaulting a police officer, and disorderly conduct. On 7 December 1979, you pleaded guilty to aggravated assault, resisting arrest with violence, and criminal mischief. You were released to military authorities on 8 January 1980.

On 26 February 1980, you submitted a voluntary written request for a less than honorable administrative discharge for the good of the service to escape court-martial for your 327-day UA. As a result of this course of action, you were spared the stigma of a court-martial conviction for your long-term UA, as well as the potential sentence of confinement and the negative ramifications of receiving a punitive discharge from a military judge. Prior to submitting this voluntary discharge request, you conferred with a qualified military lawyer, at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. You acknowledged that if your request was approved, your characterization of service will be under Other Than Honorable conditions (OTH) without referral or consideration by an administrative separation board. You acknowledged and understood the adverse nature of an OTH discharge and the potential life-long adverse consequences of receiving such a characterization.

In the interim, on 26 February 1980, a Medical Officer (MO) review determined that a psychiatric examination was not warranted for you. The MO determined you were capable of understanding the charges and the nature of the proceedings against you. On 6 March 1980, your separation physical examination noted no psychiatric or neurologic conditions or symptoms. Ultimately, on 20 March 1980, you were separated from the Navy with an OTH discharge characterization and assigned a RE-4 reentry code.

On 4 February 1982, the Naval Discharge Review Board (NDRB) denied your initial application for discharge upgrade relief. The NDRB determined your OTH discharge was proper as issued and that no change was warranted.

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 for a discharge upgrade and contentions that: (a) you met a girl in █ and she became pregnant and you married her, (b) she did not want to move to █ with you, (c) she was having great difficulties with the pregnancy and was in and out of the hospital, (d) you felt like the safety of your unborn child was at risk so you made the decision to go back to █, (e) your daughter was born healthy, and you thought many times you needed to turn yourself in, (f) post-partum your wife laid in bed with depression and you basically had to take care of your newborn baby, and (g) before you knew it a year had passed and you went to work in █ to support your family. Additionally, the Board noted you checked the "Other Mental Health" box on your application but chose not to respond to the Board's 28 July 2023 letter requesting supporting evidence for your claim. For purposes of

clemency and equity consideration, the Board considered the entirety of the evidence you provided in support of your application.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that characterization under OTH conditions is generally warranted for misconduct and 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 Sailor. The simple fact remains is that you left the Navy while you were still contractually obligated to serve and you went into a UA status without any legal justification or excuse for no less than 327 days. The Board determined that the record clearly reflected your misconduct was intentional and willful and indicated you were unfit for further service. Moreover, the Board noted that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions.

As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your serious misconduct and disregard for good order in discipline clearly merited your discharge. 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,

2/15/2024

