



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. 10554-23
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 application on 20 December 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 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 Navy and commenced active duty on 31 August 1972. On 5 March 1974, you commenced a twenty-two-day period of unauthorized absence (UA). While you were UA, you were apprehended by civilian authorities in █ County, █ for drunk driving and speeding, and awarded your choice of a fine or confinement. On 29 March 1974, you were released from civilian custody and reported to your command where you subsequently, on 1 April 1974, commenced a one-hundred-ninety-five-day period of UA. During your UA, you were declared a deserter and it ended with your surrender to military authorities at Naval Air Station █, █ on 13 October 1974.

On 15 October 1974, you were transferred to Naval Station █ for disciplinary action. , On 22 October 1974, you were apprehended by civilian authorities and found guilty the following day for driving under the influence (DUI) and operating an uninsured motor vehicle. You served sixty days confinement at the █ County Correctional Farm until 21 December 1974. On 10 January 1975, you were charged with three specifications of UA for

twenty-two, one-hundred-ninety-five, and fifty-nine days respectively, and those charges were referred to a Special Court Martial (SPCM). However, on 27 January 1975, you were apprehended by civil authorities in ■■■■■, ■■■■■, and confined pending transfer to military custody.

On 28 January 1975, you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for UA from 5 March 1974 to 27 March 1974, 1 April 1974 to 13 October 1974, and 23 October 1974 to 21 December 1974. Prior to submitting this 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. Your request was granted, and your commanding officer was directed to issue you an under Other Than Honorable conditions (OTH) discharge. On 13 February 1975, you were issued an OTH discharge.

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 characterization of service and your contentions that your discharge was supposed to be changed to a General discharge after six months, you were offered early release from active duty due to the end of the war, you served on three ships during the Vietnam conflict, you were exposed to asbestos and lead while onboard ship, and you now have cancer and other health issues related to your exposure. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

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 civilian convictions and request for separation in lieu of trial by court-martial (SILT), outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact your repeated misconduct had on the good order and discipline of your command. The Board also noted that you were given multiple opportunities to address your conduct issues, but you continued to commit misconduct. Additionally, the Board further noted that the misconduct that led to your request to be discharged in lieu of trial by court-martial was substantial and, more likely than not, would have resulted in a punitive discharge and extensive punishment at a court-martial. Therefore, the Board determined that you already received a large measure of clemency when the convening authority agreed to administratively separate you in lieu of trial by court-martial; thereby sparing you the stigma of a court-martial conviction and likely punitive discharge. Furthermore, the Board opined that there is no provision in law or regulations that allows for recharacterization automatically after six months or due solely to the passage of time. Finally, the Board noted you provided no evidence to substantiate your contentions regarding the circumstances of your release from active duty. Therefore, the Board concluded you were properly discharged based on your SILT request and not an early release due to the end of the war.

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,

1/22/2024

