



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. 5072-24
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 19 July 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 Navy and commenced a period of active duty on 13 December 1982. You began a period of unauthorized absence (UA) on 6 February 1984 that lasted until your apprehension by civil authorities on 12 July 1984. Upon your return to military custody, you underwent a medical evaluation which confirmed you were pregnant. On 27 July 1984, you received non-judicial punishment (NJP) for the aforementioned period of UA and failure to obey a lawful order. You were sentenced to restriction, forfeiture of pay, extra duty, and reduction in rank.

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 31 July 1984 with a General (Under Honorable Conditions) characterization of service,

your narrative reason for separation is “Pregnancy,” your separation code is “KDF,” 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, your desire to upgrade your characterization of service and reinstate your paygrade to E-3. You contend that you were not discharged for misconduct but for getting pregnant and married without permission. In addition, you argue that you were the top of your class while in the accession training pipeline and, if you consider your lost time due to your period of UA, your time in the Navy was less than 180 days. Finally, you imply that you deserve to be reinstated to E-3 since you were punished for getting pregnant and married without permission. For purposes of clemency and equity consideration, the Board noted you did not provide documentation describing post-service accomplishments or advocacy letters.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Further, the Board was not persuaded by your contentions that you were punished for getting pregnant and married. The Board noted your NJP was imposed based on your long-term UA, in addition to an unspecified order’s violation. In considering your misconduct, the Board determined your extended period of UA was more than sufficient to support your reduction in paygrade, especially considering the aggravating factor of civil apprehension. Finally, the Board was not persuaded by your arguments regarding “lost time” and noted that there is no tolling of active duty service or jurisdiction during a period of UA. In addition, the Board noted you commenced your period of UA more than 12 months after your commencement of active duty service. Ultimately, the Board concluded you were fortunate to receive a GEN characterization of service and you already received a large measure of clemency when the Navy chose not to administratively separate you for your serious misconduct.

As a result, the Board concluded significant negative aspects of your service outweigh the positive aspects and continues to warrant a GEN 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,

8/9/2024

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