



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. 5275-24

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 27 September 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 13 November 1990. Your enlistment physical examination, on 27 June 1990, and self-reported medical history both noted no psychiatric or neurologic issues, conditions, or symptoms. On 25 April 1991 you reported for duty on board the █.

On 20 July 1992, you commenced a period of unauthorized absence (UA) that terminated on 21 July 1992. On 12 August 1992, you received non-judicial punishment (NJP) for: (a) your 1-day UA, (b) dereliction in the performance of duties, and (c) false official statements. You did not appeal your NJP.

On 17 August 1992, your command notified you of administrative separation proceedings by reason of misconduct due to the commission of a serious offense. You consulted with counsel

and waived in writing your rights to submit statements and to request a hearing before an administrative separation board. In the interim, your separation physical examination, on 17 September 1992, and self-reported medical history both noted no psychiatric or neurologic issues, conditions, or symptoms. Ultimately, on 19 October 1992, you were separated from the Navy for misconduct with an under Other Than Honorable (OTH) discharge characterization and were assigned a RE-4 reentry code.

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 are requesting this correction be made because you have served ample time to your country and you would benefit when you apply for Department of Veterans Affairs medical assistance and other benefits, and (b) your offense was minor and not during war time. Additionally, you checked the "PTSD" box on your application but chose not to provide any supporting evidence of 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 to deserve an upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record, and in this case an OTH discharge characterization and no higher was appropriate. 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 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.

Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits or enhancing educational or employment opportunities. As a result, the Board determined that there was no impropriety or inequity in your discharge and 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,

10/2/2024

