



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

██████████  
Docket No. 5294-24  
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 23 October 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 commenced active duty on 5 January 1973. On 15 August 1973, you received non-judicial punishment (NJP) for violating a lawful general regulation. On 20 December 1973, you received your second NJP for unauthorized absence (UA) and missing ship's movement. On 8 February 1974, you were found guilty at summary court-martial (SCM) for four days UA, missing ships movement, and breaking restriction. You were sentence to forfeiture of pay, and hard labor without confinement. You subsequently requested an administrative discharge on the grounds of psychological and social deterioration, caused by your inability to conform to military life. On 13 February 1974, the Commanding Officer (CO), informed you that he was giving a two month period to allow you to adjust to military duty.

On 1 July 1974, you began three periods of UA that ended on 23 September 1974. During these periods of UA, you also missed ships movement on 11 July 1974. On 21 November 1974, through military counsel, you requested a good of the service in lieu of trial by court-martial with

an Other Than Honorable (OTH) characterization for the earlier described misconduct. Your request was approved by the separation authority and you were so discharged on 10 January 1975.

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 an upgrade in your characterization of service to qualify for veterans' benefits and contentions that your first UA was your fault but unintended, your XO called you into his stateroom and told you the only way you were getting out of the Navy was to go UA for more than 30 days, you went UA to be discharged, and you feel manipulated by the XO. For purposes of clemency and equity consideration, the Board noted you provided a personal statement but no documentation describing post-service accomplishments or advocacy letters.

After thorough review, the Board concluded that your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by NJPs, SCM, and request to be discharged in lieu of trial by court-martial, 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 noted that you provided no evidence, other than your statement, to substantiate your contentions. Additionally, the Board also 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/or 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 possible punitive discharge. Finally, 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 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,

11/8/2024

