



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

█  
Docket No. 5940-24  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 8 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, 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 Reserve and began a period of active duty on 16 June 1992. On 7 November 1994, you began a period of unauthorized absence (UA) which lasted three-days and resulted in nonjudicial punishment (NJP) on 4 December 1994. On 24 January 1995, you received a second NJP for one instance of UA from appointed place of duty. Subsequently, you were counseled concerning the aforementioned offense and advised that failure to take corrective action may result in administrative separation. On 24 April 1995, you received a third NJP for an instance of UA from appointed place of duty and for being incapacitated for the performance of your duties.

Consequently, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to pattern of misconduct and misconduct due to commission of a serious offense. After you decided to waive your procedural rights, your commanding officer recommended an Other Than Honorable (OTH) discharge characterization of service by reason of misconduct due to pattern of misconduct and misconduct due to commission of a serious offense.

The separation authority approved an OTH discharge characterization by reason of misconduct due to pattern of misconduct. On 19 June 1995, you were so discharged.

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 an upgrade because of your current situation as a small business owner seeking to be certified as a Veteran Business Owner, (b) you realized your minor infringement and regret every single one of them, (c) you were young and immature and did not think about the consequences of your irresponsible actions at that time, (d) you went back to school and completed a degree in accounting, (e) you would like to continue to pursue your education with a master's degree and desire veterans benefits to assist you, and (f) you have raised a family and have been happily married for over 26 years. 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 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 likely negative impact it had on the good order and discipline of your unit. Additionally, the Board found that your conduct showed a complete disregard for military authority and regulations. Further, the Board noted that you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct. 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 the 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,

7/29/2024

