



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. 6419-24
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 5 August 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 active duty on 16 June 2000. On 23 March 2001, you commenced a period of unauthorized absence (UA) during which you missed ship's movement. This UA was ended by your apprehension on 6 April 2001. On 16 April 2001, you commenced a second period of UA which ended with your surrender on 5 June 2001.

On 7 June 2001, you were charged with violating Article 86 of the Uniform Code of Military Justice (UCMJ) for the aforementioned period of UA. Consequently, you submitted a written request for an Other than Honorable (OTH) discharge in lieu of trial by court-martial. After your request was approved, you were so discharged on 27 June 2001.

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 discharge characterization and change your narrative reason for separation to "Secretarial Authority." You contend that your command committed a material error of discretion by discharging you "in lieu of trial by court-martial" instead of stationing you on a different ship. You argue that you were only 17 when you enlisted and, like many other young men, were prone to making some mistakes. When you returned from UA, you were treated as a criminal, handcuffed in front of your peers, and forced to endure a humiliation you were unfamiliar in feeling. After this experience, you were ostracized further when you contracted an STD and the whole ship became aware of it due to an announcement made to others on the ship. Lastly, these experiences caused you to go UA. For purposes of clemency and equity consideration, you provided your counsel's brief that included your personal statement and other enclosures, evidence of your post-service professional and family life, and multiple 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 two periods of UA, the first of which included your missing of ship's movement in addition to termination by apprehension, outweighed these mitigating factors. In making this finding, the Board considered the likely negative impact your repeated absence had on the good order and discipline of your command and your brief period of active duty. 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, the Board noted you provided no evidence, other than your statement, to substantiate your contention that you were unfairly treated.

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. While the Board carefully considered the evidence you submitted in mitigation and commends you on your post-discharge accomplishments, 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. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. 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

