



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. 6597-24

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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session, considered your reconsideration application on 6 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).

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the U.S. Navy and began a period of active duty service on 21 November 1988. Your enlistment physical examination, on 14 November 1988, and self-reported medical history both noted no psychiatric or neurologic issues, symptoms, history, or counseling. You enlisted in the "Active Mariner" program and agreed to serve thirty-six (36) months on active duty, and further participate in the Navy Reserve for another thirty-six (36) months.

Following completion of your initial required training, on 26 March 1989, you reported to ██████████. Following that overseas tour of duty, on or about 27 April 1990, you reported for duty with ██████████.

On or about 8 April 1991, you filed an Enlisted Personnel Action Request (EPAR) for an immediate early transfer from your duty station citing "irreconcilable differences between personnel." The EPAR specifically noted that, upon approval of such request, you would acquire the necessary obligated service to transfer. On 30 May 1991, your command delivered to you your permanent change of station (PCS) orders for temporary duty under instruction at ██████████ for further transfer to ██████████. As a result of your EPAR approval and PCS move, your original orders were extended for an additional twenty-four (24) months past your original end of obligated active service (EAOS) of 20 November 1991.

On 17 March 1992, you commenced a period of unauthorized absence (UA) that terminated on 27 March 1992. On 16 June 1992, you received non-judicial punishment (NJP) for: (a) your 10-day UA, (b) two (2) separate specifications of making a false official statement, (c) three (3) separate specifications of drawing a check without sufficient funds (on a closed account), (d) altering a public record, and (e) failing to pay a just debt to the Navy Lodge in ██████████. You did not appeal your NJP.

Consequently, your command notified you of administrative separation proceedings by reason of misconduct due to the commission of a serious offense. You waived in writing your rights to consult with counsel and to request a hearing before an administrative separation board.

In the interim, your separation physical examination, on 8 July 1992, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms. On 24 July 1992, you commenced another UA period and never returned to military control prior to your discharge.

On 29 July 1992, your commanding officer (CO) recommended to the Separation Authority that you be discharged with an under Other Than Honorable conditions (OTH) discharge characterization. Your CO specifically recommended:

[Petitioner's] problems began upon arrival at ██████████. Despite counseling and warnings, he continued to "see" a co-worker's wife from his previous duty station and frequently referred to her as his wife. He fathered a child by her while she was still married and then absented himself without authority from this command in order to be with her. He fabricated a story to cover himself and altered medical records in an attempt to cover up his deception. During his unauthorized absence, he bounced three checks and failed to pay for his stay at the Navy Lodge in ██████████. These problems were a continuation of similar problems from his previous command. He was brought to captain's Mast for these charges.

An administrative separation represents the fastest means for the Navy to rid itself of a severe burden. [Petitioner] has no wish to stay in the Navy and has stated his

desire for an Other than Honorable discharge if he could just be separated as quickly as possible. His obvious distain for the entire Naval Service is magnified by his immature, selfish, and irresponsible behavior. This command requests that he be separated from the Navy with an Other than Honorable discharge.

Ultimately, on 2 September 1992, you were separated from the Navy for misconduct with an OTH discharge characterization and assigned an RE-4 reentry code.

On 24 April 2019, this Board denied your initial petition for discharge upgrade relief.

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: (a) you were extended past your EAOS, which rendered your separation action and resulting OTH discharge characterization invalid, (b) if you had not been coerced into the extension, your enlistment contract would have expired before your command had proceeded with an administrative separation and you would have received an Honorable discharge, (c) although you were technically AWOL, there were significant mitigating factors surrounding the offense and you deny that you engaged in the other misconduct that served as the catalyst for your discharge, (d) your waiver of rights in connection with your administration was a forgery and you never signed any election of rights form, and (e) you are deserving of relief as a matter of equity and clemency. 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 found your contention that your separation action was invalid to be without merit. The Board determined that your administrative separation processing was legally and factually sufficient. The Board noted that you voluntarily submitted an EPAR request and, as a result of such request and subsequent PCS transfer to ██████████ your original active duty service obligation was extended for an additional twenty-four (24) months, thus giving you a revised EAOS of 20 November 1993.

The Board also determined your contention that you were coerced into the extension to not be persuasive. The Board noted that there is no evidence in the record to indicate that you were coerced into extending your active duty service obligation. Similarly, the Board determined there is no evidence in the record to suggest someone forged your signature on your administrative separation election of rights form. The Board determined the evidence you provided was insufficient to overcome the presumption of regularity in your case. The Board also noted that you did not appeal your NJP and was not willing to re-litigate the well-settled facts and misconduct underlying your OTH discharge.

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 also noted that while your separation was pending, you went into a UA status without any legal justification or excuse for a total of forty (40) days. 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.

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. While the Board carefully considered the evidence you submitted in mitigation, 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 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,

9/18/2024

