



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. 6730-24
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 30 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 Navy and commenced active duty on 28 January 1981. On 3 November 1981, you commenced a period of unauthorized absence (UA) ended by your surrender on 7 November 1981. On 14 November 1981, you commenced a second period of UA, also ended by your surrender, on 15 November 1981. On 24 November 1981, you received non-judicial punishment (NJP) for UA. Despite this, on 10 March 1983, you commenced a period of UA ended by surrender the following day. That same day, you again went UA, only to surrender on 14 March 1983. On 16 March 1983, you were again UA, until ended by your surrender on 31 March 1983. You were subsequently issued an administrative remarks (Page 13) counseling concerning deficiencies in your performance and/or conduct. You were advised that any further

deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge.

On 29 April 1983, you were found guilty at Summary Court-Martial (SCM) of UA for your three most recent infractions, in addition to failing to be at your appointed place of duty (muster), and failure to obey a lawful order. You were sentenced to confinement at hard labor for 20 days, and forfeiture of \$250 pay per month for one month. On 25 June 1983, you again received NJP for a period of UA between 27 May and 3 June 1983.

Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Based on the information contained on your Certificate of Release or Discharge from Active Duty (DD Form 214), you were separated on 22 July 1983 with an "Under Other Than Honorable Conditions (OTH)" characterization of service, your narrative reason for separation is "Misconduct Pattern Frequent Involvement of a Discreditable Nature with Civil or Military Authorities," your reentry code is "RE-4," and your separation code is "HKA," which corresponds to misconduct – pattern.

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 your contentions that your dream was to be a photographer, you worked hard and took a class prior to enlisting but didn't have the money for college so you decided to enlist, you told the recruiter you wanted to be a photographer, you were told that although there were no billet openings for photographers mate but you could join the Delayed Entry Program and the recruiter could guarantee you would get on the job training as a photographer, you were sent to fuel jets on the █, after bootcamp, you thought it was a mistake but your chain of command told you that you would be fueling jets for the next four years, the personnel at the photo lab told you there's no such thing as on the job training for their positions, and you started drinking because every dream you had about being a Navy photographer went down the drain by being lied to by your recruiter. For purposes of clemency and equity consideration, the Board considered your letter submitted with the application.

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 multiple periods of UA, NJPs, and SCM, 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. The Board additionally noted that you were given opportunities to address your conduct issues but you continued to commit misconduct, which ultimately led to your OTH characterization of service. The Board noted you provided no evidence, other than your statement, to substantiate your contentions. Therefore, the Board was not persuaded by your contentions of unfair treatment.

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, 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,

10/24/2024

