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

[redacted]
Docket No. 6740-24
Ref: Signature Date

[redacted]

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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 12 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 this 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 Reserve and began a period of active duty on 29 January 1979. On 17 July 1979, you commenced a period of unauthorized absence (UA) which lasted 38 days and ended in your surrender. Subsequently, you were issued a Pg. 13 administrative remark retaining you in the naval services yet advising you that any further misconduct may result not only in disciplinary action but in processing for administrative discharge. On 3 September 1979, you commenced another period of UA which lasted 134 days.

Based on the information contained on your Certificate of Release or Discharge from Active Duty (DD Form 214), it appears that you submitted a voluntary written request for an Other Than Honorable (OTH) discharge for separation in lieu of trial (SILT) by court-martial. In the absence of evidence to contrary, it is presumed that prior to submitting this voluntary discharge request, you would have conferred with a qualified military lawyer, been advised of your rights, and warned of the probable adverse consequences of accepting such a discharge. As part of this

discharge request, you would have acknowledged that your characterization of service upon discharge would be an OTH.

Unfortunately, the documents related to your administrative separation are not in your official military personnel file (OMPF). In this regard, 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 (as is the case at present), will presume that they have properly discharged their official duties. Your DD Form 214 reveals that you were separated from the Navy on 25 February 1980 with an OTH characterization of service, your narrative reason for separation is "For the Good of the Service," your separation code is "KFS (For the Good of the Service (in lieu of trial by court martial))," and your reenlistment code is "RE-4."

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 character of service and contentions that: (1) you were cheated out of a career in the Navy because of the Navy's incompetence, (2) the Navy was actively discharging anyone who had disciplinary issues, (3) the Admiral who appointed the incompetent commander informed you that they were discharging anyone with disciplinary problems, (4) your military counsel advised you to accept the Other Than Honorable (OTH) discharge, warning that otherwise, you would face time in the brig and a dishonorable discharge, (5) you disobeyed some orders, but you and others were used as scapegoats [for broader issues], (6) you were at the right place at the wrong time, (7) if there had been proper discipline, better commanders, and no threats, things would have turned out differently, (8) You were expected to be taught discipline, but due to poor leadership, that didn't happen. Instead, you were penalized for lacking the discipline you were never properly taught, and (9) it has been 45 years since your discharge, you have always been employed, stayed out of trouble, and are now retired and living life without bothering anyone. For purposes of clemency and equity consideration, the Board considered the evidence you submitted in support of your 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 UAs and SILT discharge, outweighed these mitigating factors. In making this finding, the Board considered the seriousness and discrediting nature of your misconduct. 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. Further, the Board found that your misconduct was intentional and made you unsuitable for continued naval service. Finally, the Board was not persuaded by your contention that ample time has elapsed to warrant a change to your discharge since there is no provision of federal law or in Navy or Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years.

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,

9/13/2024

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