



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. 6905-24
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 7 October 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 25 August 1998. On 12 May 1999, you commenced a period of unauthorized absence (UA) ended by your surrender on 13 March 2001. On 14 March 2001, after knowingly waiving your right to consult with legal counsel, you admitted your guilt and requested an Other Than Honorable Discharge (OTH) in lieu of trial. Thereafter, on 20 March 2001, your commanding officer (CO) directed your discharge pursuant to your request. You were so discharged on 12 April 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 and change your narrative reason for separation to Secretarial Authority. You contend that you are stigmatized by your discharge, which robs you of your good name, and injures your economic and social potential as a member of the general community, and that despite being unfairly prejudiced, and still suffering the effects of your discharge, you excelled in community college, pursued, in part, a degree in criminal justice and investigations. You have sought and found work in the private

investigations field where you displayed outstanding work ethic and dedication, and have since transitioned to car sales where, after 10 years, you are highly accomplished. You own and run several businesses, including a pest control business and a vending machine company, in addition to flipping houses. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application including your legal brief with exhibits.

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 discharge request to avoid trial for your lengthy UA, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct, as well as the likely negative impact your significant absence had on the good order and discipline of your command. Although the Board carefully considered your contention that you were and are unfairly stigmatized by your discharge, the Board found no error in your discharge, opining that your misconduct, alone, warranted your separation. 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.

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 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,

10/30/2024

