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

[redacted]
Docket No. 6960-24
Ref: Signature Date

[redacted]

Dear [redacted]

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 30 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 to 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 began a period of active duty on 21 September 1965. Your pre-service history of misconduct included driving without a license, speeding, having too many people on a motorbike, and being ruled as ungovernable.

Your Navy misconduct was comprised entirely of multiple periods of prolonged unauthorized absence (UA), a violation under Article 86 of the Uniform Code of Military Justice (UCMJ), and breaking restriction during the periods following your punishment for those absences, a violation under Article 134. In May 1966, your first Summary Court-Martial (SCM) was for a UA period from 25 April 1966 to 4 May 1966, for which you served 20 days of confinement at hard labor with a concurrent forfeiture of pay. You were then convicted by Special Court-Martial (SPCM) for two UA periods from 23 October 1966 through 1 December 1966 and from 6 December 1966 through 4 January 1966. Although your punishment included a four month period of confinement at hard labor with concurrent forfeitures of pay and reduction to the lowest paygrade of E-1, you did not receive a punitive discharge. Following your release from confinement, you immediately absented yourself again with a UA period from 4 June 1967

through 28 June 1967. On 18 September 1967, you were convicted by a second SPCM for that Article 86 offense and sentenced to 2 months confinement at hard labor with concurrent forfeitures of pay, reduction to E-1, and a punitive Bad Conduct Discharge (BCD). However, the portion of your sentenced extending to the BCD was not approved, and you were retained on active duty.

You served your period of confinement and, shortly after your release from confinement, were apprehended by civilian authorities in November 1967. You were held until 16 November 1967 but charges were dismissed with no further action and you were released to military authorities. You were then tried and convicted, on 21 December 1967, by your third SPCM for two more periods of UA from 17 October 1967 through 16 November 1967, which included a portion of the time you were in civil custody, and 20 November 1967 through 1 December 1967. You were also found guilty of breaking restriction on 20 November 1967. In spite of the severity of the misconduct of your continued absences, the sentence of your third SPCM included only 60 days of restriction with concurrent forfeitures of pay.

Your fourth and final SPCM was held on 13 June 1968. You were convicted under Article 86 for a final UA period from 7 March 1968 through 28 March 1968 and under Article 134 for again breaking restriction on 7 March 1968. Your fourth SPCM adjudged a sentence of six months confinement at hard labor with concurrent forfeitures of pay and, for the second time, a punitive discharge in the form of a BCD. Incident to this conviction, you requested to be immediately discharged rather than wait for legal review of the findings and sentence of your trial proceedings, which was conducted in accordance with law. The Article 65b review of your fourth SPCM noted the aggravating factor that your absence had begun with breaking restriction and had been terminated by apprehension; however, it opined that a lengthy period of confinement with protracted forfeiture of pay would serve no useful purpose and recommended approving only four months of confinement. On 28 August 1968, your fourth SPCM was reviewed and affirmed. Meanwhile, you requested waiver of restoration and specified the reason being that you did not like the Navy. You were discharged on 20 September 1968 with a BCD.

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 your contentions that you could not cope with military life and wanted out of the service, but no one would listen. You also state that you feel you have more than paid for your crime, and you believe that someone with a similar problem today would be able to get out of their active duty contract without going to jail. For purposes of clemency and equity consideration, the Board noted you did not provide documentation describing post-service accomplishments or advocacy letters.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your SCM and SPCMs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Observing the repeated pattern of your UA periods, the Board concurred with your contention that you wanted out of the Navy and struggled to adapt to military life. Regrettably, you chose to voluntary obligate yourself to your enlistment contract and were therefore required to serve the duration of that obligation unless discharged prior to the expiration of your contract for some other reason. Consistent with your contention

that you simply wanted out and no one would listen, the Board observed that your first punitive discharge was disapproved. For whatever reasons, the Navy sought to retain you on active duty to serve your contract and to attempt to rehabilitate the problem of your UA periods; however, the Board found that disapproval of your first punitive discharge was neither inequitable nor unjust simply because it required you to continue serving on active duty in accordance with your enlistment contract. Considering the flagrant and pervasive nature of your UA periods, the Board disagreed that, in today's environment, your misconduct would have been handled through less severe means or without confinement. To the extent that you received significantly more "second chances" to continue serving whereas a service member today might be discharged more rapidly under adverse circumstances and with fewer opportunities to rehabilitation, the Board again found that affording you continued opportunities to successfully complete your obligated service was, if anything, a benefit to you rather than an injustice because you had multiple occasions to avoid receiving an undesirable discharge. Even though your retention resulted in increased instances of misconduct and, therefore, punishment, the Board determined the choice to report as required for duty or to absent yourself without authority rested with you as an individual. Reviewing the repetitive nature of your misconduct and your clearly expressed desire to be released, the Board found it more likely than not that you continued absenting yourself in hopes of eventually attaining a discharge, regardless of the cost. This deduction is supported by the fact that, knowing your first BCD had been disapproved as part of your sentence, you requested immediate release following your second adjudged punitive discharge and you then expressly waived restoration rather than requesting clemency, stating that you did not like the Navy. While it is unfortunate that you were not able to adapt more easily to military service, the Board concluded it does not excuse the misconduct which you chose to commit during your military service or the attendant effect by way of your 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 a BCD. 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. 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 the 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 is attached 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,

9/20/2024

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