



Docket No. 6969-24
Ref: Signature Date

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 25 November 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 after disclosing a pre-service driving under the influence of alcohol (DUI) civilian offense and commenced active duty on 1 October 1981. On 15 February 1983, you commenced a period of unauthorized absence (UA), during which you missed ship's movement, that ended in your surrender on 13 April 1983. On 28 June 1983, you were found guilty at Summary Court Martial (SCM) of UA for your period of UA and missing ship's movement. Consequently, you were notified of pending administrative separation processing with an Under Other Than Honorable conditions (OTH) discharge by reason of misconduct due to commission of a serious offense. You elected to consult with legal counsel and subsequently waived your rights to submit a statement or have your case heard by an administrative discharge board. The Separation Authority subsequently directed your discharge with an OTH characterization of service and you were discharged on 1 September 1983. However, your

Certificate of Release or Discharge from Active Duty (DD Form 214) erroneously indicates you received an Honorable discharge.

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 change your reason for separation and your contentions that your misconduct was a result of being berated and harassed by your division officer, forty-one years have passed, and the narrative reason listed on your DD Form 214 has affected your reputation and benefits. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

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 SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact your conduct had on the good order and discipline of your command. The Board noted you provided no evidence, other than your personal statement, to substantiate your contentions and observed that you already benefitted considerably from an administrative error when your command erroneously issued you a DD Form 214 indicating Honorable service¹. Finally, absent a material error or injustice, the Board declined to summarily change your reason for discharge solely for the purpose of facilitating veterans' benefits or enhancing educational or employment opportunities.

As a result, the Board concluded your narrative reason for separation remains appropriate. 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 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,

12/29/2024

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¹ The Board declined to correct the administrative error based on existing Board policy that prevents record changes that negatively effect Petitioners.