



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

Docket No. 9218-24
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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 27 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 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, 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 United States Navy and began active duty on 27 June 1979. On 7 December 1981, you began a period of unauthorized absence (UA) that was terminated on 27 April 1982. On 8 September 1982, you were found guilty at a special court martial for the period of UA. After your release from confinement, you began a period of UA on 13 December 1982. On 28 October 1983, you were apprehended and returned to military custody on 1 November 1983.

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 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. Your DD Form 214 reveals that you were separated from the Navy on 20 December 1983 with an Other Than Honorable (OTH) characterization of service, your narrative reason for separation is "Separation in Lieu of Trial by Court Martial," your separation code is "KFS 887," 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 Memos. These included, but were not limited to, your desire to upgrade your discharge character of service and contentions that: (1) you were very young and deployed on the ■■■■■■■■ (■■■■), (2) your wife had become pregnant by another man, and (3) you weren't thinking clearly and went AWOL. For purposes of clemency and equity consideration, the Board noted that you did not provide documentation 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 SPCM and SILT discharge, 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. The Board also considered the likely negative effect your misconduct had on the good order and discipline of your command. The Board also considered that unexpectedly absenting yourself from your command placed an undue burden on your chain of command and fellow service members, and likely negatively impacted mission accomplishment. Finally, 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 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 determined your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. Even in light of the Wilkie Memos and reviewing the record liberally and 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,

1/6/2025

