



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. 9751-24
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 6 January 2025. 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, 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 began a period of active duty on 1 October 2002. On 8 February 2004, you began a period of unauthorized absence (UA) which lasted 220 days. On 29 November 2004, you were charged with a period of UA, at which point, you requested an Other Than Honorable (OTH) discharge characterization in lieu of trial by court martial. The separation authority approved your request and you were so discharged on 27 December 2004.

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 for a discharge upgrade and change to your reason for separation and reentry code. You contend that: (a) you were involved in a car accident while on leave in █ and suffered injuries which required admission to a local hospital for a long period of time, (b) you were unable to contact anyone as you were unconscious, (c) upon discharge from the hospital, you turned yourself in to military authorities and were waiting for resolution of your UA for months, (d) you signed your discharge paperwork under duress,

coercion, and pressure as you were told that if you did not sign it could take years, (e) prior to this incident, you did not had any negative performance evaluations, (f) post discharge, you received a bachelor's degree in nursing, (g) you are currently working with veterans in a mental health unit, (h) you have worked in the healthcare sector for over 20 years and would like to rejoin the military as a nurse. For purposes of clemency and equity consideration, the Board noted you submitted copies of your bachelor's degree, associates diploma, and registered nurse license.

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 lengthy period of UA and request to be discharged in lieu of trial by court martial, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact it had on the good order and discipline of your unit. 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. Finally, the Board noted you did not submit any evidence, other than your statement, to substantiate your contention that you were hospitalized as a result of an accident or that you were coerced into submitting your request to be discharged in lieu of trial by court-martial¹. Therefore, the Board found that you were properly discharged based on your misconduct and voluntary request to be separated in lieu of trial by court-martial. The Board also found that your assigned reentry code remains appropriate based on your unsuitability for further military service.

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 for your interest in rejoining the military, 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 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 attaches to all official records. Consequently, when

¹ You request to be discharged in lieu of trial by court-martial explicitly states, "I hereby voluntarily submit this request free from any duress..." and is signed by you and witnessed by your assigned defense counsel. Your defense counsel's endorsement states, "[you] has admitted he is guilty...[and you] sincerely regrets the mistakes he has made and wants to accept responsibility for his actions." The Board notes you have now disavowed any responsibility for your charged misconduct but provided no evidence to support your claims of innocence or coercion.

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,

1/20/2025

