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

[redacted]
Docket No. 10284-24
Ref: Signature Date

[redacted]

Dear Petitioner:

This is in reference to your application for correction of your great uncle's naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of his 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 31 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, 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).

Your late great uncle, [redacted] (hereinafter "Petitioner"), enlisted in the U.S. Navy and began a period of active duty service on or about 15 March 1918.

On 14 November 1918, Petitioner commenced a period of unauthorized absence (UA) that terminated on 19 November 1918. Petitioner was convicted at a Summary Court-Martial (SCM) for his five-day UA. The SCM sentence included a loss of pay of $82.00 that was later remitted.

On 22 November 1918, Petitioner requested a release from active duty. Petitioner stated in his request that his mother was dependent upon him and he was her only means of support. On 11 December 1918, Petitioner's request for a release was denied by higher authority.

On 1 February 1919, Petitioner commenced another UA when he failed to report back after liberty expired. Petitioner's UA terminated on 13 February 1919.

On or about 28 March 1919, Petitioner was convicted by a General Court-Martial (GCM) for his 12-day UA. The Court sentenced Petitioner to a Dishonorable Discharge (DD), confinement for one (1) year, and to "suffer all the other accessories of said sentence as prescribed by Naval Courts and Boards."

On 17 April 1919, the Office of the Judge Advocate General (OJAG) approved the GCM proceedings, findings, and sentence; but mitigated the confinement down to restriction to ship or station for a period of three (3) months and loss of three months pay. OJAG also remitted the DD during the period of restriction on the condition that Petitioner "conducts himself in a manner as in the opinion of his commanding officer warrants his further retention in the service; otherwise at the discretion of his commanding officer the dishonorable discharge will be executed at any time during said period."

However, on 23 April 1919, Petitioner failed to muster. As punishment, Petitioner was ordered to serve ten (10) days of solitary confinement. Additionally, on 19 May 1919, Petitioner began another period of UA that terminated after approximately seven (7) days and twelve (12) hours. On 3 June 1919, Petitioner was convicted at a second SCM for his seven-day UA. The SCM sentence included confinement for sixty (60) days and the enforcement of the remitted DD from the GCM sentence as previously approved on 17 April 1919. Ultimately, on 15 July 1919, Petitioner was discharged from the Navy with a DD.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in Petitioner's case in accordance with the Wilkie Memo. These included, but were not limited to, your desire for a discharge upgrade and contentions that: (a) it would be no surprise that [redacted] suffered from what the Navy would now recognize as PTSD, (b) the trauma of having his ship sunk, the chaotic abandonment of the ship, the unknown, unseen enemy potentially being over the crest of next wave, a real danger of drowning, the potential of predatory sharks prowling the waters.....all these things must have been terrifying, (c) Petitioner voluntarily enlisted and served with no behavioral issues, i.e. with good conduct even while sailing on the [redacted] and event to the point of advancing in rank, (d) Petitioner faced death in the service to his country on both the [redacted] and [redacted], and something must have snapped inside of him and he wanted out of the Navy…no matter what the personal cost to his reputation or the rest of his life, (e) a change in upgrade would have no financial impact on the Navy, (f) no one is looking for benefits, money or retribution, (g) this request this simply because Petitioner's service in defense of his country, short though it was, impacted the rest of his life, and (h) Petitioner put his life on the line and deserves the review that the Navy now offers. For purposes of clemency and equity consideration, the Board considered the totality of the evidence you provided in support of your application.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. The Board did not believe that Petitioner's record in his sixteen (16) months of service was otherwise so meritorious to deserve an upgrade. The Board concluded that

significant negative aspects of Petitioner's conduct and/or performance greatly outweighed any positive aspects of his military record. The Board determined the record reflected that Petitioner's serious misconduct was intentional and willful and demonstrated he was unfit for further service. The Board also determined that the evidence of record did not demonstrate that Petitioner was not mentally responsible for his conduct or that he should not be held accountable for his actions.

Additionally, the Board gave consideration to Petitioner's record of service and your contentions about any traumatic or stressful events Petitioner experienced and their possible adverse impact on his service. However, the Board concluded that there was no convincing evidence that Petitioner suffered from any type of mental health condition while on active duty, or that any such purported mental health conditions were related to or mitigated the misconduct that formed the basis of his discharge. As a result, the Board concluded that Petitioner's misconduct was not due to mental health-related conditions or symptoms. Moreover, even if the Board assumed that Petitioner's misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of Petitioner's cumulative misconduct outweighed any and all mitigation offered by such mental health conditions.

The Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. The Board also noted that, although it cannot set aside a conviction, it might grant clemency in the form of changing a characterization of discharge, even one awarded by a court-martial. However, the Board concluded that despite your contentions this was not a case warranting any clemency as Petitioner was properly convicted at a GCM of serious misconduct and had two other SCM convictions. The Board determined that characterization with a DD appropriate when the basis for discharge is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor. The simple fact remains is that Petitioner left the Navy and went into a UA status without any legal justification or excuse on three (3) separate occasions for a total of twenty-four (24) days.

As a result, the Board determined that there was no impropriety or inequity in Petitioner's discharge and concluded that his misconduct and disregard for good order in discipline clearly merited his discharge. While the Board carefully considered the evidence you submitted in mitigation, 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 Petitioner the relief you requested or granting Petitioner relief as a matter of clemency or equity. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of Petitioner's misconduct. Accordingly, given the totality of the circumstances, the Board determined that your request on behalf of the Petitioner 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,

2/26/2025

[redacted]

Executive Director

Signed by: [redacted]