



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

██████████
Docket No. 10880-24
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 5 February 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).

You enlisted in the U.S. Navy and began a period of active duty on 27 December 1974. You subsequently completed this enlistment with an Honorable characterization of service on 26 September 1978 and immediately reenlisted. On 8 January 1980, you received non-judicial punishment (NJP) for five days of unauthorized absence (UA). On 25 March 1980, you started a period of UA that lasted 1,336 days. On 19 December 1983, in consultation with counsel, you submitted a written request for an Other Than Honorable (OTH) discharge for separation in lieu of trial (SILT) by court-martial.

Unfortunately, some 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 18 January 1984 with an OTH

characterization of service, your narrative reason for separation is “Separation in Lieu of Trial by Court-Martial,” your separation code is “KFS,” 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 Memo. These included, but were not limited to, your desire for an upgrade in your characterization of service and contentions that you served honorably for five years, were told you were all set to separation, four years later you were arrested for desertion, and you took the OTH. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

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 NJP 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. Further, the Board observed that you reenlisted for six years on 27 September 1978 and were on active duty when you went UA. Additionally, despite the contentions raised in your detailed defense counsel’s letter, the Board noted that your SILT request does not reference a mistake of fact argument and contains your voluntary request to be discharged in lieu of a trial by court-martial¹. The Board determined that you and your legal counsel appropriately weighed the evidence in your case and based on a legal analysis of likelihood of success of your argument, concluded that it was in your best interest to submit a SILT request in lieu of raising a mistake of fact defense at trial. The Board similarly was not persuaded by your mistake of fact contention based on the lack of any evidence to support it. Finally, the Board noted that the misconduct that led to your request to be discharged in lieu of trial by court-martial was likely 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 that there was no impropriety or inequity in your discharge and concluded that your misconduct and disregard for good order and discipline clearly merited your discharge. While the Board carefully considered the evidence you submitted in mitigation and, even in light of 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 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 By submitting a SILT request, the Board presumed you acknowledged that you were guilty of the offense pending a court-martial

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

