



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

Docket No. 11030-24
Ref: Signature Date

Dear Petitioner:

This is in reference to your application for correction of your husband'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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session, considered your application on 26 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 husband's 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.

Your husband, hereinafter referred to as Petitioner, enlisted in the Navy and began a period of active duty on 29 January 1965. On 2 February 1970, Petitioner commenced a period of unauthorized absence (UA) that concluded upon his surrender to military authorities on 22 November 1971; a period totaling 660 days.

Unfortunately, the documents pertinent to Petitioner's administrative separation are not in his 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. Based on the information contained on Petitioner's Armed Forces of the United States Report of Transfer or Discharge (DD Form 214), it appears that he submitted a voluntary written request for an Under Other Than Honorable (OTH) discharge for the good of the service (GOS) separation in lieu of trial by court-martial. In the absence of evidence to contrary, it is presumed that prior to submitting this voluntary discharge request, Petitioner would have conferred with a qualified military lawyer, been advised of his rights, and warned of the probable adverse consequences of accepting such a discharge. As part of this discharge request, Petitioner would have acknowledged that his characterization of service upon discharge would be an OTH. Petitioner's DD Form 214 documents that, on 17 December 1971, he was discharged from the Navy with an OTH characterization of service, separation reason of "Discharge for the Good of the Service," authority of "BUPERSMAN 3420270 & COMNAVBASE LTR N6:JET:bf 10DEC71 -282-," and reentry code of "RE-4."

Petitioner previously applied to this Board for an upgrade to his characterization of service and was denied relief on 4 January 1977. Before this Board's denial, Petitioner applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied Petitioner's request for an upgrade, on 30 March 1973, based on their determination that his discharge was proper as issued.

On 16 September 1977, under the Department of Defense (DOD) Special Discharge Review Program (SDRP), Petitioner's characterization of service was upgraded to General (Under Honorable Conditions) (GEN). Petitioner then re-applied to the NDRB for an upgrade of his character of service and was denied relief on 1 June 1978 and 3 January 1983. The NDRB denied his request, based on their determination that no change was warranted.

On 10 February 2009, Petitioner re-applied to this Board for an upgrade to his characterization of service and was denied relief.

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 upgrade Petitioner's discharge character of service to Honorable in order to qualify for dependency and indemnity compensation, death pension, and accrued benefits. You contend Petitioner served with dedication and honor during challenging times, including the Vietnam War, and the inability as a couple to conceive a child from the time of marriage and Petitioner's resulting anxiety affected his final duty period. You contend an upgrade to Petitioner's character of service would be a lasting tribute to his memory and a recognition of the challenges he faced with courage and integrity. Additionally, the Board noted you checked the "PTSD" and "Other Mental Health" boxes on your application but chose not to respond to the Board's request for supporting evidence of your claims. For purposes of clemency and equity consideration, the Board noted you provided a statement, Petitioner's death certificate, and your marriage contract but no documentation describing Petitioner's post service accomplishments.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that Petitioner's misconduct, as evidenced by his extensive period of UA and GOS request, outweighed these mitigating factors. In making

this finding, the Board considered the seriousness of Petitioner's misconduct and concluded that it showed a complete disregard of military authority and regulations. The Board also noted that the misconduct that led to Petitioner's request to be discharged in lieu of trial by court-martial was substantial and determined that Petitioner already received a large measure of clemency when the convening authority agreed to administratively separate him in lieu of trial by court-martial; thereby sparing him the stigma of a court-martial conviction and possible punitive discharge. Additionally, the Board concluded the record reflected that Petitioner's misconduct was intentional and willful and demonstrated that he was unfit for further service. Further, the Board determined Petitioner already received sufficient clemency when the DOD SDRP upgraded his characterization of service from OTH to GEN. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits.

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 and discipline clearly merited his discharge. While the Board carefully considered the evidence 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 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 Petitioner's misconduct. Accordingly, given the totality of the circumstances, the Board determined your request does not merit relief.

Despite its finding that relief was not warranted, this Board expressed its deepest sympathy for your loss.

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.

In the absence of sufficient new evidence for reconsideration, the decision of the Board is final, and your only recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

Sincerely,

3/21/2025

