



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

██████████
Docket No. 11674-24
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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 17 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 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, 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).

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) 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 Marine Corps and began a period of active service on 28 June 1977. On 28 July 1978, you were counseled regarding your substandard work habits. On 15 August 1978, you received non-judicial punishment (NJP) for willful disobedience of an order from a superior noncommissioned officer. On 2 September 1978, you commenced a period of unauthorized absence (UA) that ended on 25 October 1978. On 1 November 1978, you commenced a second period of UA that ended on 6 November 1978. Upon your return, you submitted a request to be discharged under Other Than Honorable (OTH) conditions for the good of the service to avoid a trial by court-martial. Your request was approved by the separation authority, and you were so discharged on 2 March 1979.

You previously applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request, on 15 July 1980, after concluding your discharge was proper as issued. At some point, the Defense Discharge Review Program (Special) recommended updating your record and issued you a DD256MC Honorable discharge certificate.

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 your discharge characterization to obtain veterans benefits and your contention that your Battalion Commander wanted to make an example out of you. For purposes of clemency consideration, the Board noted you did not provide documentation describing post-service accomplishments or advocacy letters.

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 NJP 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 determined your conduct showed a complete disregard for military authority and regulations. The Board noted you were given opportunities to correct your conduct deficiencies but chose to continue to commit misconduct; which led to your OTH discharge. 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 concluded 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 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. 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,

2/5/2025

