



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

██████████
Docket No. 11760-24
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 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 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 2 January 1991. You were granted a waiver upon entry to active duty for a non-minor misdemeanor. You were issued a counseling warning for defective enlistment and induction due to fraudulent entry into the naval service for failure to disclose preservice involvement with civil authorities for petty theft and advised further deficiencies in your performance or conduct may result in processing for administrative discharge

On 7 August 1991, you started a period of unauthorized absence (UA) that ended with your apprehension on 26 August 1991. On 9 October 1991, you were found guilty at special court-martial (SPCM) for 11 days UA. You were sentence to reduction in rank. On 16 November 1991, you began another period of UA that ended with your apprehension on 7 January 1992.

Based on the information contained on your Certificate of Release or Discharge from Active Duty (DD Form 214), it appears that you submitted a voluntary written request for an Other Than Honorable (OTH) discharge for separation in lieu of trial (SILT) by court-martial. In the absence of evidence to contrary, it is presumed that prior to submitting this voluntary discharge request, you would have conferred with a qualified military lawyer, been advised of your rights, and warned of the probable adverse consequences of accepting such a discharge. As part of this discharge request, you would have acknowledged that your characterization of service upon discharge would be an OTH.

Unfortunately, the 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 20 February 1992 with an Other Than Honorable (OTH) characterization of service, your narrative reason for separation is "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 believe you were coerced into taking a plea deal and required mental health assistance at the time. You also contend that the officer presiding over your SPCM questioned why it wasn't handled at non-judicial punishment (NJP). You further contend that, after your SPCM, when you returned to the ship you were constantly bullied and forced to do physical training which no one else had to do. The Board noted you checked the "PTSD" and "Other Mental Health" boxes on your application but did not respond to the Board's request for supporting evidence. For purposes of clemency and equity consideration, the Board further noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters but did provide a personal statement.

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 SPCM 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. 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 contesting your guilt at trial. The Board also noted that you submitted no evidence, other than your statement, to substantiate your contentions. Finally, the Board 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 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. 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. 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,

3/17/2025

