



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

██████████
Docket No. 3411-25
Ref: Signature Date

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Dear ██████████

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 16 May 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 service on 27 September 1980. Your enlistment physical examination, on 26 September 1980, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

On 29 August 1982, you commenced a period of unauthorized absence (UA). While in a UA status you missed the movement of your unit on 29 August 1982. Your command declared you to be a deserter on or about 28 September 1982. Your UA terminated after on 13 February 1983.

On 29 April 1983, you commenced another UA. Your UA terminated on 2 May 1983.

On 24 August 1983, you were convicted at a Special Court-Martial (SPCM) of: (a) your 168 and

3-day UAs, and (b) missing movement. The court sentenced you to confinement at hard labor for sixty (60) days, forfeitures of pay, a reduction in rank to paygrade E-1, and a discharge from the Navy with a Bad Conduct Discharge (BCD). On 3 October 1983, the Convening Authority approved the SPCM sentence as adjudged, except suspended any confinement in excess of forty-five (45) days.

On 20 December 1983, the U.S. Navy-Marine Corps Court of Military Review affirmed the SPCM findings and sentence. Upon the completion of SPCM appellate review in your case, on 24 September 1984, you were discharged from the Navy with a BCD and were assigned an RE-4 reentry code.

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 a discharge upgrade and contentions that: (a) your lawyer was ineffective, (b) your conduct, efficiency, behavior and proficiency marks were very good before and after your offense, (c) your record of promotions showed you were generally a good service member, (d) you had other acts of merit, (e) your record of court martial convictions indicated only an isolated offence, (f) your ability to serve was impaired by my your and immaturity, (g) your ability to serve was impaired because of marital and family problems, (h) personal problems impaired your ability to serve, (i) your ability to serve was impaired because you were not working in the field you were trained for, (j) the punishment you received was too severe compared with today's standards, and (k) your command abused its authority in the way they punished you. 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 your record was otherwise so meritorious to deserve an upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined the record reflected that your misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not be held accountable for your actions.

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 you were properly convicted at a SPCM of serious misconduct. The simple fact remained is that you left the Navy while you were still contractually obligated to serve and you went into a UA status without any legal justification or excuse on two (2) separate occasions for a total of 171 days.

Moreover, the Board determined that no ineffective assistance of counsel (IAC) occurred. The Board noted there is no convincing evidence in the record to support your contention that you did not receive adequate representation. The Board unequivocally concluded that you failed to meet the burden to show that: (a) your defense counsel's performance was deficient and fell below an

objective standard of reasonableness, and (b) but for the alleged deficiencies, there was a reasonable probability of a more favorable result. Accordingly, the Board concluded that no IAC occurred whatsoever, and any such suggestion or argument was not persuasive.

As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board 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, even in light of the Kurta, Hagel, and Wilkie Memos and reviewing the record liberally and 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 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,

5/23/2025

