



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE RD
ARLINGTON, VA 22204

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Docket No. 9127-25
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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.

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 23 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 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 previously applied to the Board contending that you received bad advice regarding a pay discrepancy which you immediately remunerated, that you were truthful with the government, that your discharge was inequitable in light of your overall service career, and that your post-service character warranted consideration of clemency. Your request was considered on 3 April 2019 and was denied. In its decision, the Board noted that charges had been preferred against you and that you would have consulted legal counsel prior to submitting your request for resignation in lieu of trial. Your request was accepted, and you were permitted to resign under honorable conditions while being spared the stigma of a court-martial conviction and the potential penalties of confinement and a punitive discharge. The summary of your service remains substantially unchanged from that addressed in the Board's previous decision.

After careful review, the Board reached the following conclusions and denied your application for relief.

The Board initially concluded you were appropriately processed for separation based on your resignation request. While the Board carefully considered your contention for mitigation and denial of misconduct, the Board noted you provided no evidence, other than your statement, to substantiate your contention. You claim your misconduct was an act of omission, for which you provided restitution, rather than intentional fraud; however, the Board noted you provided vague details of your marriage breaking down in 1992, at least two full years prior to the discovery of the overpayments, without providing any specific evidence clarifying the precise timing of your divorce. Furthermore, the Board noted that you transferred to ██████████ ██████████ in August 1993; after which you verified your service record. You again verified your service record in November 1994. Either of those administrative verifications would have included a review of your record of emergency data, your dependent status, and your entitlements to housing allowance. Yet, at no point did you correct your record, as was your responsibility to do, nor did you inform your records administrators of your divorce, as was likewise your responsibility to do. The Board considered that you have not adequately explained your failure to do so or, alternatively, submitted evidence that no such obligation arose. As such, the Board found your protestations of lack of intent and innocent omission dubious. Therefore, the Board determined the presumption of regularity applies to the finding that you committed the misconduct that formed the basis of your resignation and were properly separated for misconduct with a General (Under Honorable Conditions) characterization of service.

The Board also considered the totality of the circumstances to determine whether equitable relief was warranted in the interests of justice in accordance with the Wilkie Memo. In this regard, the Board considered, amongst other factors, the totality of your service, the non-violent nature of your misconduct and the fact you paid restitution to the government, your relative youth and immaturity at the time of your misconduct, the negative effect your discharge has had on your life, your post-service record of accomplishments, your service to your community, the character reference you provided for review, and the passage of time since your discharge.

The Board found that the mitigating factors were not nearly sufficient to justify any equitable relief. Specifically, the Board found that the severity of your misconduct far outweighed all of the mitigating factors combined. In particular, the Board noted that the misconduct that led to your request to be resign 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 allow you to resign in lieu of trial by court-martial; thereby sparing you the stigma of a court-martial conviction and possible punitive discharge. Further, given your apparent lack of candor with your conduct, the Board found your additional clemency evidence wholly insufficient to outweigh the fraud and theft which resulted in your resignation in lieu of trial. Rather, the Board concluded that you were fortunate to avoid a likely conviction and to be permitted to resign under honorable conditions rather than under other than honorable conditions. Finally, the Board believed that it would be unjust to characterize your less than honorable service in the same manner as the service of the thousands of service members who, unlike you, honorably completed their service obligations without engaging in misconduct warranting the early curtailment of their service. While the Board noted that flawless service is not required to receive an Honorable characterization of service, the nature and gravity of your misconduct led them to conclude that your service was not Honorable. Therefore, the Board did not find an upgrade of your discharge to Honorable to be warranted in the interests of justice. Based on the same rationale, the Board concluded that your reason for separation, separation code, separation authority, and reentry code remain appropriate.

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 the 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 is attached 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,

2/18/2026

