



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

701 S. COURTHOUSE RD

ARLINGTON, VA 22204

██████████
Docket No. 11091-25

Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 you did not file your application 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 23 February 2026. 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).

1. You enlisted in the Navy and began a period of active duty on 19 December 1977.
2. On 30 May 1980, you received nonjudicial punishment (NJP) for violating Uniform Code of Military Justice (UCMJ) Article 86 (unauthorized absence (UA) from 10 April 1980 through 27 May 1980) and were awarded a letter of reprimand.
3. On 10 November 1980, you received a second NJP for violating UCMJ Article 86 (two specifications) and were awarded punishment of forfeiture of \$200 pay per month for two months (suspended for four months).
4. 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 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.

5. Unfortunately, most documents pertinent to your administrative separation are not in your official military personnel file. 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 Certificate of Release or Discharge from Active Duty (DD Form 214) reveals that you were separated from the Navy, on 11 December 1980, with an OTH characterization of service¹, narrative reason for separation of “For the Good of the Service,” separation code of “KFS,” and reentry code of “RE-4.” Your separation code is consistent with a separation in lieu of trial by court-martial².

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

The Board initially concluded you were appropriately processed for administrative separation based on your record of misconduct. While the Board carefully considered your contention that you were targeted and punished as a reprisal for reporting illegal dumping of garbage by the Navy, the Board noted you provided no evidence, other than your statement, to substantiate your contention. Additionally, the Board noted you did not deny committing the misconduct that formed the basis for your first NJP. Therefore, the Board determined the presumption of regularity applies to your administrative separation and no error exists with your record.

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, your contentions that you were targeted and assigned an OTH characterization after reporting the Navy for illegal garbage dumping and tortured while incarcerated in the brig, the totality of your service, your need for veterans’ benefits, the non-violent nature of your misconduct, your relative youth and immaturity at the time of your misconduct, the harshness of your punishment, your advanced age, 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 found that your conduct showed a complete disregard for military authority and regulations. The Board observed you were given an opportunity to correct your conduct deficiencies but chose to continue to commit misconduct, which led to your OTH discharge. Specifically, the day after your NJP for a period of UA totaling approximately 47 days, you commenced another period of UA that totaled an additional 120 days. Your conduct not only showed a pattern of misconduct but was sufficiently pervasive

¹ The Board acknowledged your contention that the Federal Bureau of Investigation has your discharge characterization as “Dishonorable.” However, the Board found no evidence in your record to indicate you were punitively discharged at a court-martial with a Dishonorable discharge. The Board has no cognizance over the FBI system of records and, therefore, did not consider your request to upgrade based on this contention. The Board recommends you contact the FBI should you desire to question their characterization of your discharge from the Navy.

² While your record did not contain your administrative separation documents, your DD Form 214 lists lost time of 2 June 1980 to 30 September 1980. This indicates you submitted a request to be discharged with an OTH for this period of UA in lieu of trial by court-martial.

and serious to negatively affect the good order and discipline of your command. Further, as pointed out earlier, you provided no evidence to substantiate your allegation of reprisal or mistreatment by the Navy. Therefore, the Board was not persuaded by your contentions. In addition, 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 enlistments without engaging in misconduct warranting the early curtailment of their service. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. While the Board considered your age and possible need for benefits to address your health concerns, they determined the severity of your misconduct outweighed any mitigation resulting from it. Therefore, the Board did not find an upgrade of your discharge to General (Under Honorable Conditions) or Honorable to be warranted in the interests of justice. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct.

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 character of service and contentions that: (1) you contributed to ██████████ environmental protections; (2) instead of being recognized, you were given an Other than Honorable discharge and sent to the Navy brig at ██████████ for exposing the Navy to Green Peace; (3) and that you are working on a Veterans Affairs disability claim for the torture inflicted on you at the brig. For purposes of clemency and equity consideration, the Board considered the totality of your application which consisted of your DD Form 149 and the evidence you provided in support of your application.

Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

The Board thus determined there was insufficient evidence to conclude you were the victim of reprisal in violation of 10 USC § 1034. 10 USC § 1034 provides the right to request Secretary of War review of cases with substantiated reprisal allegations where the Secretary of the Navy's follow-on corrective or disciplinary actions are at issue. Additionally, in accordance with DoW policy you have the right to request review of the Secretary of the Navy's decision regardless of whether your reprisal allegation was substantiated or non-substantiated. Your written request must show by clear and convincing evidence that the Secretary of the Navy acted arbitrarily, capriciously, or contrary to law. This is not a de novo review and under 10 USC § 1034(c) the Secretary of War cannot review issues that do not involve reprisal. You must file within 90 days of receipt of this letter to the Under Secretary of War for Personnel and Readiness (USW(P&R)), Office of Legal Policy, 4000 Defense Pentagon, Washington, DC 20301-4000. Your written request must contain your full name, grade/rank, duty status, duty title, organization, duty location, mailing address, and telephone number; a copy of your BCNR application and final decisional documents; and a statement of the specific reasons why you are not satisfied with this decision and the specific remedy or relief requested. Your request must be based on factual allegations or evidence previously presented to the BCNR; therefore, please also include previously presented documentation that supports your statements.

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,

3/9/2026

