



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

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Docket No: 7648-20

Ref: Signature Date



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 the entire record, the Board for Correction of Naval Records (Board) found the evidence submitted was 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 23 July 2021. 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, including the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo).

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues 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 commenced active duty on 20 April 1998. On 28 July 2015, you were involved in an incident at two different restaurants, which involved allegations that you assaulted an individual. On 19 November 2015, you were arrested by the █ police department for assault. On 11 February 2016, you were counseled concerning your involvement in the alleged assault and notified of the initiation of administrative separation processing and your rights in connection therewith. You elected to have an administrative board.

On 13 April 2016, you were screened for post-traumatic stress disorder (PTSD) and traumatic brain injury, and it was determined that you met the requirements for PTSD but it was determined to be unlikely the cause for his misconduct. Your administrative board was held on 18 April 2016. The administrative board found that you committed misconduct, that you should be discharged, and that your characterization of service should be general (under honorable conditions). The administrative board also found that your discharge should be suspended for a period of twelve months. On 19 April 2016, your commanding officer recommended that you be discharged with a general (under honorable conditions) characterization of service. On 26 May 2016, the discharge authority notified the Commandant of the Marine Corps of your pending discharge with a general (under honorable conditions) characterization of service, and on 14 June 2016 you were so discharged.

The Board carefully considered all potentially mitigating factors in your current petition to determine whether the interests of justice warrant relief in your case including in accordance with the Wilkie Memo. In your petition, you deny that you engaged in the alleged misconduct and you contend that the evidence submitted by the Marine Corps was insufficient to sustain a finding that you committed assault as defined by the Uniform Code of Military Justice. You also contend that: (a) the Marine Corps acted improperly when it separated you despite your administrative board's decision to suspend your separation for a period of 12 months; (b) the decision to separate you and deprive you of your retirement is not fair, just, or equitable; and (c) a general characterization of service is not equitable when viewed in the light of the relatively minor nature of the misconduct at issue, mitigating factors, and your overall service record.

In review of all of your materials, the Board did not find an injustice in your record warranting relief. With respect to your contention that the Marine Corps did not meet its burden to sustain a finding that you committed assault, this Board is not a fact-finding body. Prior to your discharge, you were provided notice of the proposed action to separate you from the Marine Corps, and you elected the right to an administrative board, at which you were represented by counsel, who appeared to have vigorously represented your interests. At your administrative board, the parties were represented by counsel and had the authority to examine witnesses and evaluate documentary or other evidence. With respect to your contention that the Marine Corps acted improperly when it separated you despite your administrative board's recommendation to suspend your separation for a period of 12 months, the Marine Corps Separation and Retirement Manual (MARCORSEPMAN), paragraph 6309, provides the guidance for the action that a separation authority may take on a case, such as yours, which included an administrative board. Paragraph 6309(2)(b) provides that, in circumstances where the administrative board recommends that a separation be suspended, the discharge authority may "[a]pprove the separation, but disapprove suspension of the separation." Thus, it was within the authority of the discharge authority to disapprove suspension of the separation, as happened in your situation.

The Board also carefully considered and evaluated your final two contentions, namely, that the decision to separate you and deprive you of your retirement was not fair, just, or equitable and that a general characterization of service is not equitable when viewed in the light of the relatively minor nature of the misconduct at issue, mitigating factors, and your overall service record. The Board did not believe that you provided sufficient evidence to demonstrate that your administrative separation, which was a result of misconduct that you engaged in, and for which

you availed yourself of all procedural protections, including an administrative board, was not fair, just or equitable, or that your overall service record overcame the misconduct for which you were discharged.

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 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,

8/2/2021

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Executive Director

Signed by █