



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

█
Docket No: 4200-21
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 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 22 November 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 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).

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 U.S. Marine Corps and began a period of active duty on 28 June 1982. On 11 August 1983, you received your first nonjudicial punishment (NJP) for being in an unauthorized absence (UA) status for 159 days. On 23 May 1984, you received a second NJP for failure to go to your appointed place of duty and for disobeying a noncommissioned officer. On 16 July 1984, you were counseled for another period of UA and disobeying lawful orders. Unfortunately, on 16 January 1985, you received a third NJP for disrespect towards a noncommissioned officer. On 23 January 1985, you were notified of the commanding officer's (CO) intent to recommend to the separation authority that you be discharged with an other than honorable (OTH) characterization

of service due to pattern of misconduct. On 22 February 1985, a staff judge advocate's review of your case documented the proceedings of your case were sufficient in law and fact. On 28 February 1985, the separation authority agreed with your CO and directed you be discharged with an OTH. On 7 March 1985 you were discharged. On 6 November 1990, the Performance Evaluation Review Branch denied your request to have your reentry code changed finding the "RE-4" code you received to be correctly assigned.

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 and your contentions that: (1) you feel your discharge is not commensurate with your incident; (2) you were never advised of your rights; (3) you did not receive legal representation; (4) no charges were ever read to you; (5) while standing outside of your CO's office you overheard the CO and other enlisted white Marines involved in the proceedings use vulgar racial language; (6) you felt discriminated against many times; and (7) you were unaware that you could submit a request for a discharge upgrade. The Board viewed your allegations with serious concern. However, this Board is not an investigating agency nor does it have the resources to investigate unsubstantiated allegations. Additionally, the Board noted you did not submit advocacy letters or post-service documents to be considered for clemency purposes. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct outweighed these mitigating factors. Accordingly, given the totality of the circumstances, the Board determined 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 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,

12/15/2021

█

Executive Director

Signed by: █