



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

█
Docket No: 5681-21
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 18 October 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, 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 19 January 1993. On 26 April 1994, you received nonjudicial punishment (NJP) for failing to go to your appointed place of duty and for willfully disobeying a lawful order. On 11 November 1994, you received an administrative remark in your record documenting that you were not recommended for promotion to E-3. Although given an opportunity to provide a statement, you chose not to. On 22 June 1995, you were convicted at a special court-martial (SPCM) of two specifications of unauthorized absence (UA). The first was from 11 to 27 October 1994 totaling 17 days, and the second from 26 December 1994 until you surrendered 144 days later on 18 May 1995. You were sentenced to

confinement for 60 days, reduction in rank to E-1, and discharge with a bad conduct characterization of service. On 10 September 1995, the Navy-Marine Corps Court of Criminal Appeals affirmed your sentence. On 30 July 1996, you were discharged with a Bad Conduct Discharge.

The Board carefully reviewed your application and 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 characterization of service based on your contention that you were unaware that you could request a discharge upgrade and would like an upgrade in order to obtain your benefits. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your repeated misconduct, as evidenced by your NJP and SPCM, outweighed these mitigating factors. Additionally, the Board noted you did not submit advocacy letters or post-service documents to be considered for clemency purposes. 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 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,

10/27/2021

█

Executive Director

Signed by: █