



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: 7120-21
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 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 12 January 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).

You enlisted in the Marine Corps on 6 March 1969. On 10 November 1970, civil authorities convicted you of second-degree burglary. On 12 November 1970, you pled guilty, were sentenced to five years' probation, and returned to military control. On 11 December 1970, you received non-judicial punishment (NJP) for being in an unauthorized absence (UA) status totaling 72 days. Subsequently, you were notified of pending administrative separation action by reason of misconduct due to civil conviction. After you waived your rights, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge by reason of misconduct due to civil conviction, with an other than honorable (OTH) characterization of service. The SA approved the recommendation, and on 31 December 1970, you were so discharged.

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 contention that your discharge was unjust and overly harsh due to your immaturity.

The Board also noted your contention that since discharge you started your own business, brought and opened a tavern, became a member of the American Legion, and became a life member of Vietnam Veterans of America.

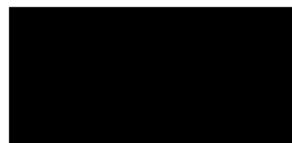
The Board noted that your punishment was a direct result of your actions, which resulted in a civil conviction. The Board noted that the evidence of record did not show that you were not responsible for your conduct or that you should not be held accountable for your actions. Lastly, the Board noted while commendable, your post-service conduct does not excuse your conduct while enlisted in the Marine Corps or the basis for your discharge.

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that seriousness of your misconduct, as evidenced by your civil conviction, outweighed these mitigating factors. 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 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,

1/20/2022

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Executive Director

Signed by:

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