



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: 7419-21
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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 25 February 2022. 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 to the Kurta Memo and 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 began a period of active service on 5 February 1979. Approximately a year later, on 22 January 1980, you received a company-level (C-L) nonjudicial punishment (NJP) for a violation of Article 86, unauthorized absence (UA), for failure to report for duty when required. You received a second C-L NJP two days later for a violation of Article 113, sleeping on post while assigned as barracks security. You served the next year without incident, but received a third C-L NJP on 5 January 1981 for another Article 86, UA, and for Article 92, disobeying U.S. Navy Regulations by possessing marijuana and a smoking device.

Your fourth C-L NJP, on 23 January 1981, was for another violation of Article 92, disobedience of a lawful order. Your fifth and final C-L NJP occurred a month later on 23 February 1981 for a violation of Article 92, due to a second incident of possession of marijuana. Finally, on 11 March 1981, you received administrative counseling advising you that your frequent involvement with military police could result in further administrative action.

In the recommendation that you not be promoted as a result of frequent offenses, your company leadership noted that you were on the verge of administrative separation; however, your battalion commander directed proceeding with administrative action. You were again found sleeping on watch on 20 April 1981. Although your immediate supervisor noted your quality of performance and other positive attributes, he assessed that your conduct needed a great deal of improvement given your frequent incidents of misconduct. As a result, you were notified of processing for administrative discharge and waived your right to representation by legal counsel or to an administrative board. Your recommendation for administrative separation was forwarded and, following legal review, you were discharged on 27 May 1981.

The Board carefully weighed all potentially mitigating factors, to include but not limited to your desire to upgrade your characterization of service, the evidence in your record that you excelled at your job and cared for your fellow Marines during your military service, and your contention you were harassed multiple times per week and were separated due to racism after being singled out following a disagreement with your commanding officer. The Board also considered your contention that you were information of an automatic upgrade to an honorable discharge after 6 months if you voluntarily separated, but that you were not given that agreement in writing.

Although the Board favorably noted the positive comments from your immediate supervisor regarding the quality of your performance at work as well as the fact that you were respected by peers and got along well with other Marines, the Board observed that you received five NJPs in a period of approximately 13 months and continued to commit further serious misconduct even after being warned of the consequences. The Board considered it significant that your misconduct included not only multiple drug-related offenses but also dereliction of duty while posted as a security watch. In spite of the seriousness and frequency of your offenses, the Board noted that you received multiple opportunities to correct your behavior and avoid further misconduct before administrative separation action was finally initiated. Further, as you served nearly a year between your initial two NJPs and your record reflects a positive evaluation of your performance of duties, the Board found a lack of evidence to support your contention that your misconduct was the result of being harassed multiple times per week. Ultimately, the Board concluded the potentially mitigating factors you submitted were insufficient to warrant relief at this time. Specifically, the Board determined that the seriousness of your misconduct, as evidenced by your five NJPs, outweighed the mitigating factors you presented. Accordingly, 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 is attached 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,

3/11/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]