



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: 7940-21
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 31 January 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 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 2 July 1973. On 23 February 1977, you were found guilty at the General Court of Justice in █ of common law robbery and assault with a deadly weapon inflicting serious injury. You were sentenced to be confined for seven to ten years. Consequently, on 28 March 1977, you were notified of your commanding officer's (CO) intent to recommend to the discharge authority that you be separated with an other than honorable (OTH) characterization of service due to your civilian conviction. The CO added, "Although [Petitioner] had no office hours and has good

proficiency and conduct marks, his conduct while on liberty was unbecoming a Marine. [Petitioner's] conviction is very serious and it is a poor reflection on him that one of his victims was a fellow Marine." On 28 April 1977, an administrative discharge board reviewed your case and recommended you be separated with an OTH as a result of your civil conviction. Further, a staff judge advocate reviewed your case and found the proceedings were sufficient in law and fact on 24 May 1977. On 26 May 1977, the discharge authority directed you be discharged with an OTH for civil conviction and you were so discharged. You subsequently petitioned the naval discharge review board (NDRB) for an upgrade of your discharge, contending your discharge was inequitable based on your record of service and because it was based on a crime that you did not commit. NDRB denied your request on 11 April 1979.

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 contention that you were the victim of a racism and pled guilty to a crime you did not commit. 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, as evidenced by your civil conviction, outweighed your unsubstantiated allegations. In making their findings, the Board also concluded that your application would have been better served with some post-discharge clemency evidence. 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,

2/15/2022

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Executive Director

Signed by: █