



Docket No: 171-22
Ref: Signature Date

Dear Petitioner:

This is in reference to your application for correction of your father's naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your father's 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 9 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 the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice or clemency determinations (Wilkie Memo).

You reenlisted in the Marine Corps on 3 January 1981 after a previous period of active duty. During the period from 23 April 1981 to 5 November 1982, you received five non-judicial punishments (NJP) for sleeping on post, two specifications of absence from appointed place of duty, seven specifications of failure to go to appointed place of duty at prescribed time, unauthorized absence (UA) totaling five days, disobeying a lawful order, and two specifications of wrongful use of marijuana. On 23 March 1983, a special court-martial (SPCM) convicted you of two specifications of UA totaling six days, assault on a non-commissioned officer (NCO), two specifications of disrespectful in language toward an NCO, and wrongfully communicating a threat. You were sentenced to confinement for four months, forfeiture of pay, and a bad conduct discharge (BCD). After the BCD was approved at all levels of review, on 23 November 1984, 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 contentions that you served honorably in the Marine Corps from 1978 to 1981 and later made a decision that resulted in your BCD from the Marine Corps. The Board also considered the character letters provided as part of your application that document your post-discharge good character.

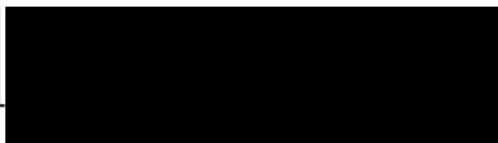
The Board noted that a Marine's service is characterized at the time of discharge based on performance during the current enlistment. The Board also noted that the evidence of record did not show that you were not responsible for your conduct or that you should not be held accountable for your actions. Further, in reviewing your history of misconduct, the Board determined you committed multiple offenses that could have easily qualified, individually, for a punitive discharge due to the seriousness of your misconduct.

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 five NJPs and SPCM conviction, outweighed the mitigating evidence in your case. While the Board was appreciative of your post-discharge good character, they determined that the seriousness of your misconduct was not sufficiently offset by this mitigating evidence to warrant an upgrade to your characterization of service. 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,

2/16/2022

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Executive Director

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