



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: 248-22
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 16 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 entered active duty with the Marine Corps on 16 September 1980. According to the information in the record, on 24 February 1983, you received non-judicial punishment (NJP) for disrespectful in language toward a non-commissioned officer (NCO). On 27 June 1983, a special court-martial (SPCM) convicted you of failure to go to appointed place of duty, unauthorized absence (UA) for one day, and two specifications of disrespect toward an NCO. On 17 October 1983, you received a second NJP for two specifications of disobeying a lawful order and wrongful use of provoking words. On 6 December 1983, your commanding officer (CO) requested you receive legal services. On 18 January 1984, a second SPCM convicted you of two specifications of disrespect toward a NCO. Although the Board lacked your entire service record, the Board relied on a presumption of regularity that you were notified of the recommendation that you be discharged by reason of misconduct due to a pattern of misconduct. After weaving your rights, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge by reason of misconduct due to a pattern of misconduct with and other than honorable (OTH) characterization of service. The SA approved the recommendation, and on 18 April 1984, you were so discharged.

As stated previously, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to rebut the presumption, to include evidence submitted by the Petitioner, the Board presume that you were properly discharged from the Marine Corps.

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, contentions that you were subjected to slurs and harassment from upper management, often given the worse duty assignment, and only received reprimands at the end of your enlistment due to a change in command.

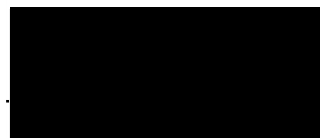
The Board noted that there is no evidence in your record, and you submitted none, to support your contentions that your command subjected you to slurs and harassment, gave you the worse duty assignment, and you only received reprimands due to a change in command.

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 two NJPs and two SPCM convictions, outweighed these mitigating factors. As a result, when weighing the seriousness of your misconduct against your active duty service, the Board concluded that the preponderance of the evidence supports a finding that your conduct was a significant departure from that expected from a Marine and merits an Other than Honorable 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,

2/24/2022



Executive Director

