



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: 1697-22

Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 4 April 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, 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 and began a period of active duty on 27 January 1976. On 4 January 1977, you received nonjudicial punishment (NJP) for disobedience of a written order. On 22 February 1977, you received a second NJP for being absent from your appointed place of duty, disrespectful in language towards a noncommissioned officer (NCO), and willful disobedience of a lawful order from an NCO. On 22 April 1977, you received a third NJP for willful disobedience of a lawful order from a senior NCO. On 9 October 1978, you received a fourth NJP for failure to comply with BnO Recruit Marksmanship Training Standard Operating Procedures (SOP). On 20 February 1979, you were arrested by civil authorities and charged with theft of government property and conspiracy to default. On 23 April 1979, you were sentenced to a \$500.00 fine and 3 years on probation based on your guilty plea for conversion of government property. On 27 Jun 1979, you were notified of the initiation of administrative separation proceedings by reason of conviction by civil authorities, at which point, you requested an Administrative Discharge Board (ADB). On 6 July 1979, your commanding officer (CO)

recommended an other than honorable (OTH) discharge characterization of service by reason of misconduct due to misdemeanor conviction by civil court. On 17 August 1979, the ADB voted (3) to (0) that you committed misconduct as a result of civil conviction and recommended your discharge with an OTH. On 10 October 1979, the staff judge advocate determined that your separation proceedings were not correct in law and fact. As a result, on 16 October 1979, the commanding general requested a limited appointment ADB. However, on 18 October 1979, you elected to waive your right to a new ADB. On 19 October 1979, your administrative separation proceedings were determined to be sufficient in law and fact. On the same date, the discharge authority approved and ordered an OTH discharge characterization of service by reason of misconduct due to conviction by civil authorities. On 26 October 1979, you were discharged. On 15 November 2021, this Board denied your request for a discharge characterization upgrade.

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 your discharge was too harsher than what needed to be, that you were a young man who made a mindless mistake, that you confessed your crime and accepted your civil punishment, and that you have not had any legal issues since you were separated from service. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your repeated misconduct, as evidenced by your NJPs and civil conviction, outweighed these mitigating factors. The Board noted you did submit a letter from your son and a Pennsylvania State Police Criminal Records Check to be considered but did not find this evidence sufficient to overcome the seriousness of your misconduct. In making these findings, the Board determined your conduct showed a complete disregard for military authority and regulations. As a result, the Board concluded your conduct was a significant departure from that expected of a Marine and continues to warrant an OTH 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 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 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,

4/26/2022

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Executive Director

Signed by: █