



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: 2901-22
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 11 May 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).

After a previous period of honorable service, you reenlisted on active duty with the Marine Corps on 14 December 1979. According to the information in the record. During the period from 10 January to 16 September 1980, you received three non-judicial punishments (NJP) for assault upon a commissioned officer, disrespectful in language toward a non-commission officer (NCO), absence from appointed place of duty, and two specifications of unauthorized absence (UA) totaling seven days. On 31 December 1980, a special court-martial (SPCM) convicted you of two specifications of UA totaling four days, absence from appointed place of duty, two specifications of disrespectful in language toward an NCO, two specifications of assault on an NCO, and wrong use of provoking words. During the period from 11 to 19 Aug 1981, you received two NJPs for UA totaling seven days, absence from appointed place of duty, and breaking restriction.

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 frequent involvement. After you waived your rights, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge by reason of misconduct due to frequent involvement with an Other Than Honorable (OTH) characterization of service. The SA approved the CO's recommendation and, on 12 October 1981, 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, the Board presume that you were properly discharged from the Marine Corps.

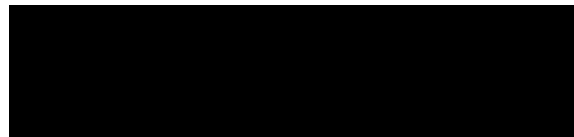
The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to; your desire to upgrade your discharge and contentions that you had a very bad drinking problem, you are now 61 years old, have been alcohol free for 37 years, and became a better person. The Board noted that there is no evidence in your record, and you submitted none, to support your contention of having a drinking problem. Additionally, for purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

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 these mitigating factors. As a result, when weighing the seriousness and frequency 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 continues to warrants an OTH characterization. After applying liberal consideration, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting clemency in the form of an upgraded 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,

5/20/2022

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Executive Director

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