



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: 3217-22
7980-20
8934-18
Ref: Signature Date



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.

A three-member panel of the Board, sitting in executive session, considered your application on 29 June 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 this 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 enlisted and entered a period of active duty in the Marine Corps on 15 August 1990. On 23 June 1993, you received nonjudicial punishment (NJP) for violation of a lawful written order by wearing earrings in violation of Article 92, Uniform Code of Military Justice (UCMJ). Your second NJP occurred, on 4 November 1993, for a five day unauthorized absence in violation of Article 86, UCMJ. Your final NJP occurred, on 5 January 1994, for two specifications of indecent assault upon a female Marine (Private First Class) by grabbing her breast and posterior, and communicating a threat by stating, "I won't tell you when I'm coming." These offenses were in violation of Article 134, UCMJ. On 16 March 1994, you were notified of administrative separation processing by reason of misconduct due to a pattern of misconduct and misconduct due to commission of a serious offense. You consulted with counsel and requested a hearing before an administrative discharge board (ADB). The ADB convened on 22 April 1994, unanimously substantiated the misconduct had occurred, and recommended that you be separated from the service with an Other Than Honorable (OTH) characterization of service, but that your separation be suspended for six months. Your Commanding Officer disagreed with the ADB and recommended you be discharged with an OTH

without suspension. The Staff Judge Advocate found the proceedings to be sufficient in law and fact and you were discharged, on 15 Jun 1994, with an OTH characterization of service.

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 your 6th Amendment rights were violated because you did not have the opportunity to confront your accuser at the ADB, that you experienced prejudice, bullying, and bigotry, that a Major told you “over my dead body will you ever be promoted,” that your First Sergeant proceeded to press charges after the victim wanted them dropped and that she was coerced into reporting the incident by a Corporal, and that your character witnesses and character references were not included in your defense. 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 three NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Further, the Board considered the likely negative impact your conduct had on the good order and discipline of your unit. In its deliberations, the Board noted that the rules of evidence do not apply at an ADB and therefore the government was not required to compel the victim to testify in person but could offer other forms of evidence such as your NJPs. Furthermore, you could have refused the third NJP and demanded trial by court martial and, had you done so, the rules of evidence would have applied to your case in a federal forum. The Board determined that during your ADB, the government provided statements from your chain of command that contained positive remarks, and the defense called three character witnesses on your behalf to include a Staff Sergeant, a Gunnery Sergeant, and a Lieutenant Colonel. The Board also determined that the ADB proceedings were reviewed by a staff judge advocate prior to your discharge and found to be sufficient in law and fact. Finally, the Board noted you provided no evidence to substantiate your contentions of unlawful conduct by your chain of command. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Marine and continues to warrant 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

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correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

7/20/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]