



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: 4836-22
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.

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 13 July 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 enlisted in the Marine Corps and began a period of active service on 30 January 1985. On 4 January 1986, you were convicted at a summary court martial (SCM) for unauthorized absence (UA) and missing movement. You were sentenced to reduction in rank, forfeiture in pay, and confinement. On 7 August 1986, you were counseled for failure to pay legal debts in a timely manner. Subsequently, on 1 October 1986, you were again counseled as a result of your failure to be at your appointed place of duty. On 2 October 1986, you received non-judicial punishment (NJP) for UA and failure to obey a lawful order. On 26 June 1987, you were convicted at special court martial (SPCM) for three specifications of UA, willfully disobeying a lawful order, and disrespectful behavior. You were sentenced to confinement and a Bad Conduct Discharge (BCD). You were discharged, on 28 October 1987, with an Other Than Honorable (OTH), as a result of your court martial conviction.

Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). However, the Board noted the discrepancy between your adjudged punitive discharge and the assigned characterization of service on your DD Form 214.

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 characterization of service and that you have been waiting for a period of time for an upgrade. 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 NJP, SCM, and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct that included incidents involving disrespect and failure to obey orders. This led the Board to conclude that your conduct showed a complete disregard for military authority and regulations. Further, the Board considered the likely negative effect your conduct had on the good order and discipline of the unit. Finally, the Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. 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.

Regarding the favorable discrepancy previously noted in your DD Form 214, in the interests of justice, the Board determined no further action was required by the Board.

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,

8/5/2022

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Executive Director

Signed by: █