



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

█
Docket No: 5217-22
Ref: Signature Date

█
█
█

Dear Petitioner:

This is in reference to your application for correction of your father's naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your father's 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 3 August 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 4 January 1974. On 31 July 1974, a special court-martial (SPCM) convicted you of larceny of a watch, a ring, and a cassette radio. You were sentenced to confinement for six months, forfeiture of pay, and a Bad Conduct Discharge (BCD). A portion of your confinement and the BCD was suspended for a period of one year, however, based on your continued misconduct, the BCD suspension was vacated. As a result, on 4 April 1975, you were discharged.

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 were told the OTH discharge would be changed to a General (Under Honorable Conditions) discharge, you woke up in the hospital blind and was told to fill out paperwork, and you were a faithful and steadfast Marine. For purposes of clemency consideration, the Board noted you

provided advocacy letters but no supporting documentation describing your post-service accomplishments.

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 SPCM conviction, outweighed the mitigating evidence in your case. In making this finding, the Board considered the seriousness of your misconduct and determined that it showed a complete disregard for military authority and regulations. In addition, the board also considered that you were provided a second chance by the Marine Corps when they suspended your BCD. Despite being given the opportunity, you continued to commit misconduct, which led to your discharge. This led the Board to find that you already received a large measure of clemency at that time. Further, the Board noted you did not provide any substantiating evidence to support your contentions. Finally, the Board further 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 a BCD. While the Board commends your post-discharge good character, 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,

8/15/2022

█

Executive Director

█