



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: 5287-22
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 19 September 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).

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Marine Corps and began a period of active duty on 23 July 2002. On 12 November 2003, you were counseled concerning your history of making untruthful statements, specifically lying to senior noncommissioned officers, and you chose not to make a statement. On 26 August 2004, you received nonjudicial punishment (NJP) for being in an unauthorized absence (UA) status from your appointed place of duty while on restriction and for willfully disobeying restriction orders. On 30 September 2004, pursuant to your guilty pleas, you were found guilty at a special court-martial (SPCM) of two specifications of larceny, two specifications

of falsely making a certain check, and making checks without sufficient funds, for which you were sentenced to be confined for 75 days; 50 of which were suspended. On 27 October 2005, you signed a pre-trial agreement to plead guilty to two specifications of uttering worthless checks in exchange for referring your case to a summary court-martial (SCM) and withdrawal of charges involving larceny of two saber radios and unlawfully entering a storage locker. In addition, you agreed to waive your right to have your case heard before an administrative discharge board. In accordance with your pretrial agreement, on 6 January 2006, you were found guilty at a SCM and sentenced to confinement for 30 days and to be reduced in rank to E-1. On 10 January 2006, you were notified of your impending administrative separation by reason of misconduct as evidenced by commission of a serious offense (COSO) which eventually resulted in your discharge, on 24 April 2006, with an Other Than Honorable (OTH) characterization for commission of a serious offense.

Post-discharge, you petitioned the Naval Discharge Review Board (NDRB) for an upgrade of your reentry code asserting you were unfairly treated by your command and claiming your separation was illegal and unjust. NDRB denied your request, on 26 Jan 2012, after determining your discharge was proper as issued.

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, change your reentry code to one that will allow you to enlist in the military, upgrade your separation code, and change your separation reason. You contend that, (1) the charge of larceny you faced had been paid by you prior to your court-martial, (2) your commanding officer's (CO) objective was to have you discharged, (3) your parent command caused you to accept the discharge, (4) the Commanding General reviewed the charge your CO was separating you for and agreed that the charges did not warrant your discharge so they offered for you to "stay or be discharged," and (5) you initially elected to stay but was told this decision infuriated your CO who told you if you stayed one phone call from him (CO) would ruin your career no matter where you were stationed. As such, you decided to give up and be discharged. For purposes of clemency consideration, the Board noted you provided supporting documentation describing post-service accomplishments and 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, SPCM and SCM, 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 was not persuaded by your contention that you were somehow treated unfairly because you repaid the funds you pleaded guilty to stealing. Additionally, the Board noted that you provided no evidence to substantiate your contentions of injustice and mistreatment. Again, the Board took notice that you pleaded guilty to multiple counts involving larceny of money and a checkbook along with falsely writing checks. Finally, the Board found that you already received considerable clemency as a result of the pre-trial agreement; thereby avoiding a special court-martial that likely would have resulted in a punitive discharge. 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. While the Board commends your post-discharge good character and accomplishments, after applying liberal consideration, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service, changing your narrative reason for separation, modifying your reentry or separation codes, or granting clemency in your case. 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,

10/6/2022

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Executive Director

Signed by: █