



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: 5491-22/
568-14
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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session on 12 October 2022, has carefully examined your current request. The names and votes of the members of the panel 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).

Post-discharge, you twice applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your requests, on 11 February 1977 and 6 May 1985, after determining that your discharge was proper as issued.

You previously applied to this Board for a discharge upgrade but were denied on 3 February 2015. The Board determined the mitigation evidence you submitted in support of your request was insufficient to offset the seriousness of your misconduct, which resulted in 11 NJPs, a SCM, and subsequent request to be discharged for the good of the service (GOS).

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 for a discharge upgrade and contention that you were not given justice or an opportunity to dispute your characterization of service. You also argue that you are unaware how you escaped trial by court-martial since you were unaware of any pending court-martial and signed papers that you were not given an opportunity to read. 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 your misconduct, as evidenced by your 11 NJPs, SCM, and subsequent request to be discharged for the good of the service (GOS), outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and determined that your conduct showed a complete disregard for military authority and regulations. Further, contrary to your contention of not being given justice or an opportunity to dispute your characterization of service. The record clearly shows that you requested a GOS discharge to escape trial by court-martial. The Board was not persuaded by your contention that you were unaware of your legal status at the time and signed your GOS request without knowledge of its contents. The Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Based on the information contained in your record, you submitted a voluntary written request for an Other Than Honorable (OTH) discharge separation to escape trial by court-martial for the good of the service. In the absence of evidence to the contrary, it is presumed that the GOS request in your record was submitted voluntarily by you after conferring with a qualified military lawyer, being advised of your rights, and warned of the probable adverse consequences of accepting such a discharge. In the document, which you signed and was witnessed by a military lawyer and commission officer, you acknowledged that you understood your rights and that your characterization of service upon discharge would likely be an OTH. All these factors led the Board to conclude your contentions were without merit. Finally, the Board considered that you already received a large measure of clemency when the Marine Corps agreed to discharge you for the good of the service; thereby sparing you from the stigma of a court-martial conviction and likely punitive discharge. As a result, the Board concluded your conduct was a significant departure from that expected from a Marine and your OTH discharge remains appropriate. 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 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,

10/20/2022



Executive Director

