



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: 5603-22
Ref: Signature Date

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Dear █:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 you did not file your application in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 14 October 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).

Prior to enlisting in the Maine Corps, you were tried and acquitted on the basis of justifiable homicide for shooting your stepfather in the head with a shotgun in defense of your mother, whom he was brutally beating, as documented in your enlistment records. You enlisted in the Marine Corps and began a period of active duty on 1 March 1978. During your first period of enlistment, you received a single nonjudicial punishment (NJP) for Article 92 due to possession of marijuana aboard a naval activity. Notwithstanding your NJP or in-service drug use, you rapidly promoted to Corporal/E-4 and were found to have served honorably, as evidenced by your first Certificate of Release of Discharge from Active Duty (DD 214).

You reenlisted on 18 October 1980 and commenced a second period of active duty. You received counseling, on 6 May 1982, regarding a recommendation for your administrative discharge for an unidentified reason; however, records accompanying your request for separation in lieu of trial indicate that you had been previously recommended by medical psychiatric personnel for discharge and that you had occasionally used marijuana since approximately 1970. Your request for separation was approved and, on 18 June 1982, you were discharged under

Other Than Honorable conditions in the grade of Sergeant/E-5 with final proficiency and conduct marks of 4.7/4.6.

Your previous request to the Board, in which you contended that your in-service marijuana use resulted from traumatic events during your childhood, was considered and denied on 23 April 2002. In the time since that request, you contend that the Department of Veterans Affairs (VA) has found your discharge to be “Honorable” for its purposes.

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 your contention regarding the VA’s characterization of your discharge. 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. Unfortunately, the Board noted that the standard applied by the VA with respect to its interpretation of your discharge for purposes of veteran benefits is distinct from that applied by the Board with respect to your service characterization for purposes of the Department of the Navy and other military Departments. Additionally, the Board observed that you did not provide a substantiating copy of that VA decision or the accompanying records relied upon in your application to the VA, which the Board acknowledged might have provided useful information for the Board to consider with respect to any facts or circumstances considered therein which could potentially mitigate your discharge.

Further, the Board’s review of your record identified that your request for administrative discharge in lieu of trial included a statement from your legal counsel addressing that you had previously been recommended for discharge by medical psychiatric personnel. However, the Board lacked further information regarding the nature of any mental health concerns giving rise to that recommendation. In light of your command’s actions in not pursuing further NJP or reduction, which permitted your discharge in the grade of E-5 with otherwise commendable performance and conduct marks, the Board would have preferred to have additional information clarifying what potentially appears to have been mitigating circumstances taken into account at the time of your discharge. The Board likewise observed, consistent with your previous contentions regarding childhood trauma, that your records document a significant traumatic pre-service experience with the shooting of your stepfather in defense of your mother. Again, however, your in-service health records were not available for the Board’s review nor did the supporting evidence submitted with your application address any underlying mental health concerns which might have affect your military service or discharge, such as evidence that your military service exacerbated any pre-existing mental health condition which might have resulted from your childhood trauma. The Board likewise found that you submitted no additional evidence of post-discharge character for consideration of clemency with respect to your conduct and behavior, community service or public contributions in the 40 plus years since your discharge, which might bear positively on the Board’s consideration whether your Other Than Honorable discharge now constitutes an injustice. 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. Even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants upgrading your

