



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

██████████
Docket No. 7637-22
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.

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 8 February 2023. 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 U.S. Marine Corps and began a period of active duty on 30 January 1959. Upon entry into the Marines, you were granted a waiver for fraudulent enlistment for failing to report an arrest for suspicious person, breaking and entering a building. On 21 September 1959, you received non-judicial punishment (NJP) for unauthorized absence (UA). On 1 December 1959, you received your second NJP for 3 days UA. Subsequently, on 6 May 1960, you were found guilty at summary court-martial (SCM) for 13 days UA.

On 8 August 1960 you started a period of UA. You were apprehended by civil authorities and charged with housebreaking and using a motor vehicle without authority. You were convicted and sentenced on 21 October 1960 to three years' probation. You were returned to military authority the same day, and broke restriction while awaiting return to your parent command. While awaiting trial by special court-martial (SPCM), you were notified for separation. Your Commanding Officer recommended to the Separation Authority (SA) that you be discharged and

be assigned an Other Than Honorable (OTH) characterization. The SA accepted the recommendation and directed you be discharged. You were so discharged on 5 December 1960.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for relief. The NDRB denied your request, in August 1981, 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 for a discharge upgrade and contentions that the repercussion was too severe for a minor civilian offense, the proceedings were mishandled and you were discharged from a SCM, you regret the events that happened, you had too much to drink and got caught goofing around a commercial property, you were not able to speak on your own behalf at your court-martial or any proceedings, and you were not appointed a defense counsel. For purposes of clemency and equity consideration, the Board noted you provided a personal statement, DD Form 214, Veterans Administration certificate of eligibility, two character statements, membership cards, and certificate of completion in a certification program.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your civil conviction, two NJPs 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 considered the likely discrediting effect your civil conviction had on the Marine Corps. Additionally, the Board also 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. Finally, the Board noted you provided no evidence in support of your contentions. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. While the Board carefully considered the evidence you submitted in mitigation, 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 granting you the relief you requested or granting relief as a matter of clemency or equity. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. 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, _____

2/16/2023

[REDACTED]

Executive Director

[REDACTED]