



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. 7719-22

Ref: Signature Date



Dear Petitioner:

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 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 9 January 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, 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).

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) 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 16 July 1968. From a period beginning on 28 November 1968 to 30 March 1970, you received nonjudicial punishment (NJP) on three occasions for the following offenses: insubordination towards a noncommissioned officer, two instances of leaving your post as a sentry without being properly relieved, and disrespectful in language towards the HqBnO of the day. On 4 May 1971, you were convicted by summary court martial (SCM) for disobeying a lawful order. You were sentenced to reduction to the rank of E-1, and forfeiture of pay. On 25 May 1971, you were counseled for frequent involvement. You were advised that failure to take corrective action could result in

administrative separation. On 15 July 1971, you received a fourth NJP for failure to report to your prescribed place of duty, failure to obey a lawful order, and leaving your weapon unattended. Between 24 August 1971 and 20 October 1971, you had three periods of unauthorized absence (UA) totaling 45 days. As a result, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to frequent involvement, at which point, you decided to waive your procedural rights. On 25 October 1971, your commanding officer recommended an Other Than Honorable (OTH) discharge characterization of service by reason of misconduct due to frequent involvement. On 25 November 1971, you began a fourth period of UA which lasted 51 days. On 5 January 1972, your administrative separation proceedings were determined to be sufficient in law and fact. On 7 January 1972, the separation authority approved and ordered an OTH discharge characterization by reason of unfitness. On 14 January 1972, you were so 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 for a discharge upgrade and contentions that you served in Vietnam honorably and that you were not aware that you received an OTH discharge. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

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 NJPs and SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that it showed a complete disregard for military authority and regulations. Further, the Board considered the likely negative impact it had on the good order and discipline of your unit. 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 granting you the relief you requested or granting relief as a matter of clemency or equity. 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 the 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,

1/25/2023

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Executive Director

Signed by: █