



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: 7727-22
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 9 November 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).

After a period of honorable service, you reenlisted in the Marine Corps on 23 February 1982. During the period from 20 December 1983 and 1 June 1984, you received two warning counseling's on absence from appointed place of duty and unauthorized use of a government phones for personal use. On 11 June 1984, you received non-judicial punishment (NJP) for a four day unauthorized absence (UA). Subsequently, you were notified of pending administrative separation action by reason of a pattern of misconduct. After you waived your rights, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge by reason of misconduct due to a pattern of misconduct with an Other Than Honorable (OTH) characterization of service. On 22 October 1984, you received an additional NJP for a three day UA. On 2 November 1984, the SA approved the CO's recommendation and, on 5 November 1984, after receiving a third NJP for failure to obey a lawful order, you were so discharged with an OTH characterization.

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 of racism, that your command ignored your requests for assistance, and ineffective assistance of counsel. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

Upon 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 three NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded that your conduct showed a complete disregard for military authority and regulations. Further, the Board considered the likely negative impact your conduct had on the good order and discipline of your command. Additionally, while the Board took into consideration your contentions, the Board noted that there is no evidence in your record, and you submitted none, to substantiate your allegations. Finally, the Board took into consideration that you were warned of the consequences of committing further misconduct but chose to do so. The Board noted that you continued to commit misconduct even as you were being processed for administrative separation. 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 of service. 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 characterization of service or granting an upgraded characterization of service as a matter of clemency or equity. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

Regarding your claim that your discharge was determined to be Dishonorable for Department of Veterans Affairs (VA) purposes, as discussed above, your assigned characterization of service is OTH. The VA may consider your service Dishonorable but their determination has no bearing on your Department of the Navy assigned characterization of service and is made for their internal purposes only.

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,

11/21/2022

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Executive Director

Signed by: █