



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

██████████
Docket No: 7952-22
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 30 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 to 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 Marine Corps and began a period of active duty on 23 April 2001. While serving overseas, you were convicted on 21 November 2002 by foreign civil authorities in ██████████ for violations of firearms and sword possession law, customs law, and tariff law. You were issued a suspended sentence of imprisonment at forced labor for 3 years with 20 days of credit for pre-trial detention. Although your platoon commander favorably endorsed your request to remain on active duty, you were notified of administrative separation proceedings for misconduct due to commission of a serious offense with a recommendation for your discharge under Other Than Honorable (OTH) conditions. You consulted with legal counsel and elected to waive your right to a hearing before an administrative board, but did submit a statement for consideration expressing your desire to remain on active duty. Your administrative separation was approved by the Commanding General, ██████████ Force Service Support Group, and you were discharged, on 26 February 2003, with an OTH.

You previously applied for consideration by the Board on the basis of clemency, asserting that you had been a good citizen for more than 10 years and felt you had proven that your misconduct

was a one-time bad choice that did not merit the severity of an OTH characterization. The Board denied your request on 4 November 2019.

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 contentions that you found what you describe as an antique weapon on an enemy combatant during operations in the ██████████ which you wanted to mount on a plaque. You explained that the cost in mailing it to your home in the ██████████ would have been significantly higher than mailing it to nearby ██████████, and assert that you did not think it would be a problem since you were sending the weapon to a ██████████. Additionally, you state that your “captain” advised you that should accept being discharged with a “General” characterization of service rather than fighting it, which you claim he told you would end up with you serving confinement. Finally, you state that this officer advised you that your discharge would automatically upgrade to “Honorable” and you could apply to reenlist within a year. For purposes of clemency and equity consideration, the Board noted you provided multiple character letters and a personal statement.

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, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the discrediting effect it likely had on the Marine Corps. In regard to your claim that you believed you could mail the firearm to the U.S. base in ██████████, the Board found your contentions disingenuous in light of the documented fact that you not only broke the weapon down into three pieces but also mailed those pieces to separate individual Marines. The Board viewed this premeditated effort as reflective of your awareness of the likely wrongfulness of your actions. Further, the Board accounted for the seriousness of the nature of your offense against the laws of a foreign sovereign with which the Marine Corps takes the upmost care in maintaining a positive relationship. Recognizing the damage which such offenses may cause in this regard, the Board strongly felt that your actions reflected poorly not only upon yourself but also upon the Marine Corps and the United States as a whole. Further, although you did not specifically identify the officer or his role in advising you, the Board notes that there is no process by which a character of a discharge is automatically upgraded merely after the passage of time. To the extent that you assert you were advised you would receive a characterization of “General (Under Honorable Conditions)” discharge, the Board observed that your notification of separation proceedings expressly specified that your commanding officer was “recommending you receive a under other than honorable conditions characterization of service” and that this notification was provided to you prior to your consultation with legal counsel and your decision to waive your administrative board hearing. 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 commends your post-discharge good character, 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.

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 is attached 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,

12/21/2022

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Executive Director

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