



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. 8003-22
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your father's naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your father's 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 18 January 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 entered active duty with the Marine Corps on 20 February 1979. On 15 May 1979, you received non-judicial punishment (NJP) for assault on another Marine by holding the Marine while he was being assaulted. On 9 March 1980, you received NJP for assaulting a Marine by placing a gun in his back and asking for money and holding a gun to a Marine's head and pulling the trigger. On 11 April 1980, you received NJP for disrespectful in language toward an NCO, failure to obey a lawful order, drunk and disorderly conduct, destruction of government property, and communicating a threat. On 17 November 1980, you received NJP for wrongfully communicating a threat. On 4 June 1981, a special court-martial (SPCM) convicted you of assault with intent to commit bodily harm by fracturing a fellow Marine's skull. You were sentenced to confinement for five months, forfeiture of pay, and a Bad Conduct Discharge (BCD). After the BCD was approved at all levels of review, on 29 November 1982, 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 to upgrade your discharge and contentions that your misconduct was a result of being called a racial epithet and your life being threaten by fellow Marines. 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 four NJPs and SPCM, outweighed the mitigating evidence in your case. In making this finding, the Board considered the seriousness of your misconduct and determined that it showed a complete disregard for military authority and regulations. Further, the Board noted you did not provide any substantiating evidence to support your contentions that you were a victim. In fact, in reviewing your record of misconduct, the Board noted you appeared to be the aggressor against other Marines. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Marine and continues to warrant a BCD. 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 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,

1/31/2023

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Executive Director

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