



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

██████████
Docket No. 130-23
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 20 March 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 30 July 1973. During the period from 21 November 1975 and 26 November 1975, you received two non-judicial punishments (NJP) for two specifications of unauthorized absence (UA) for 12 days, willful destruction of government property, and failure to go to appointed place of duty. Subsequently, on 10 February 1976, you requested a good of the service (GOS) discharge in lieu of trial by court-martial for conspiracy to commit larceny, larceny of a stereo and two wristwatches valued at \$180, breaking and entering with intent to commit larceny, and wrongful use of marijuana. Prior to submitting this request, you conferred with a qualified military lawyer, at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. Your request was granted and your commanding officer (CO) was directed to issue an Other Than Honorable (OTH) discharge for the GOS. On 2 March 1976, you were so discharged.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. On 28 January 1980, the NDRB denied your request after determining that 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 to upgrade your discharge and contention that your discharge should be upgraded because you were wrongfully accused. 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 request for GOS discharge, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved a drug offense. The Board determined that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. Further, while the Board took into consideration your contention, the Board noted that there is no evidence in your record, and you submitted none, to substantiate your allegation. Finally, the Board also noted that the misconduct that led to your request to be discharged in lieu of trial by court-martial was substantial and, more likely than not, would have resulted in a punitive discharge and extensive punishment at a court-martial. Therefore, the Board determined you already received a large measure of clemency when the Marine Corps agreed to administratively separate you for the GOS; thereby sparing you the stigma of a court-martial conviction and likely punitive discharge. 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 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,

4/4/2023

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Executive Director
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