



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. 232-23
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 you did not file your application in a timely manner, the Board waived the statute of limitation in accordance with the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo). A three-member panel of the Board, sitting in executive session, considered your application on 27 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 to the Kurta Memo and 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 5 July 1988. You were administratively counseled, on 2 November 1989, for an unauthorized absence (UA) and lack of discipline. On 8 November 1988, you accepted nonjudicial punishment (NJP) for violations of Article 116, by breach of the peace due to wrongfully engaging in a fistfight with another Marine at the barracks, and of Article 117, for wrongful use of provoking words toward that Marine.

You were administratively counseled in December 1989 regarding your responsibilities in maintaining sufficient funds when writing checks. On 28 December 1989, you received a second NJP for a violation of Article 113, due to sleeping on post.

In April 1990, consistent with your pleas of guilt, you were convicted by Special Court-Martial (SPCM) for violations of: Article 121, for stealing a check from another Marine; Article 80, for attempted larceny of \$156, the property of the Marine whose check you stole; Article 134, for making and uttering a worthless check by dishonorably failing to maintain sufficient funds; and,

five specifications of Article 123, for making and uttering checks totaling \$315, with intent to defraud, and without sufficient funds for payment. Your pre-trial agreement, which suspended all confinement in excess of 120 days, had no effect upon your sentence, which included 2 months confinement, forfeitures of pay, and a Bad Conduct Discharge (BCD). In your request to the Naval Clemency and Parole Board, you declined reinstatement to active duty but sought remission of your punitive discharge to an administrative discharge. Your request for clemency was denied 27 September 1990. The findings and sentence of your SPCM were affirmed upon appellate review, your BCD was ordered executed, and you were discharged on 6 December 1991.

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 BCD so that you may have a Veteran identification card and a Veteran designation or identification on your state driver's license. 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 SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Further, the Board considered the likely negative effect your conduct 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 service member 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.

With respect to your desire to obtain specific documents identifying your Veteran status, the Board observed that your entitlement to either Federal or state benefits is beyond its grant of authority.

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

2/12/2023

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