



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. 1034-23
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 24 February 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).

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Marine Corps and began a period of active service on 28 December 1974. Between 17 July 1975 to 27 May 1976, you received non-judicial punishment (NJP) on four occasions for the following offenses: four specifications of failure to be at your appointed place of duty, and appearing in improper uniform. During the aforementioned period, you were counseled on two occasions for your substandard performance, and recommended for separation with a General (Under Honorable Conditions) (GEN) character of service. On 27 May 1976, you were notified of the initiation of administrative separation proceedings with a GEN character of service by reason of convenience of the government. On the same day, you elected your right to consult with counsel, and did not object to your separation.

On 3 June 1976, you received your fifth NJP for your failure to report to your appointed place of duty. In the meantime, your commanding officer recommended your separation from the Marine Corps based on your misconduct, performance, and your attitude. The separation authority approved his recommendation and directed your discharge with a GEN character of service by reason of convenience of the government. Subsequently, on 28 June 1976, you were so discharged.

You previously applied to the Naval Discharge Review Board (NDRB). The NDRB denied your request to upgrade your character of service on 22 December 1976, and concluded 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 characterization of service and contention that you were promised your character of service would automatically upgraded to honorable 180 days after your discharge. For purposes of clemency and equity consideration, the Board noted you did not provide documentation describing post-service accomplishments or advocacy letters.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. The Board determined that your misconduct, as evidenced by your five NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your repeated misconduct and the likely negative impact it had on the good order and discipline of your unit. Further, the Board took into consideration that you were notified regarding the consequences of continued misconduct. This led the Board to conclude you showed a complete disregard for military authority and regulations. Finally, the Board also noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. As a result, the Board concluded significant negative aspects of your active service outweigh the positive aspects and continues to warrant a GEN characterization. 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,

3/20/2023

[REDACTED]

Signed by: [REDACTED]