



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

█
Docket No. 1147-23
Ref: Signature Date



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 April 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 U.S. Marine Corps (USMC) and began a period of active duty on 10 October 1972. On 10 January 1973, you were meritoriously promoted to PFC/E-2. On 13 June 1973, you received your first nonjudicial punishment (NJP) for sleeping upon your post. On 18 July 1973 and 31 August 1973, you received two (2) additional NJPs for multiple periods of unauthorized absence (UA). On 31 August 1973, you were counseled regarding your professional deficiencies, particularly your lack of responsibility.

On 4 October 1973, you applied for COMRATS (commuted rations/basic allowance for subsistence) and asserted you were married. On 10 October 1973, you were found guilty at a summary court-martial (SCM) of two (2) specifications of sleeping upon your post and were sentenced to hard labor without confinement, restriction for 45 days, and to forfeit \$216.00 which was apportioned at \$72.00 per month for three (3) months. On 25 October 1973, you received a fourth NJP for another period of UA. That same day, you were counseled by your barracks Commanding Officer (CO) on repeated inadequacies in your performance of duty and on your lack of adequate personal and professional qualities. You were also informed that you would be evicted from government quarters by reason of filing false information on the official application and by reason of living with a woman not your wife. On 29 October 1973, you received a fifth NJP for two (2) specifications of failing to obey a lawful order.

On 5 December 1973, you submitted a request to be discharged for the good of the service (GOS) to escape trial. You were pending charges for five (5) specifications of failing to obey a lawful order and for two (2) specifications of disobeying a lawful order. On 6 December 1973, your CO favorably endorsed your request and recommended you be discharged with an Other Than Honorable (OTH) characterization of service by reason of GOS. On 12 January 1974, you were so discharged.

On 23 September 1987, your requested upgrade of your discharge via the Naval Discharge Review Board (NDRB) was denied. The NDRB report further documents your COMRATS were revoked after it was determined that you were not married to the woman you claimed as your wife.

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 your contentions that: (1) you were punished and forced out of the military by your commander unjustly due to you being a black man who married a white woman who was previously in a relationship with said commander, (2) when your leadership found out that you were married, you were told you could not be and were not allowed to remain married to her as a result of your different ethnicities, (3) you were forced to move back into the barracks and have your marriage annulled, and (4) subsequently, your commander and leadership sought ways to end your military career. 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. Specifically, the Board determined that your misconduct, as evidenced by your NJPs and GOS request, 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. 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 that you already received a large measure of clemency when the convening authority agreed to administratively separate you in lieu of trial by court-martial; thereby sparing you the stigma of a court-martial conviction and likely punitive

discharge. Further, the Board noted that you did not provide evidence to substantiate your contentions. Specifically, the Board found no evidence regarding your marriage that resulted in the October 1973 issue with COMRATS and base housing. Therefore, the Board was not persuaded by your arguments. 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. 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 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 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,

5/8/2023

