



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

██████████
Docket No. 1485-23
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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session, considered your application on 7 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).

You enlisted in the Marine Corps Reserves and entered a period of active duty for training on 21 April 1972. On 30 September 1972, you were transferred to the individual ready reserves (IRR).

You began a second period of active service 13 October 1972. On 7 January 1974, you received non-judicial punishment (NJP) for unauthorized absence (UA), and two specifications of disobedience of a lawful order from a superior non-commissioned officer. On 30 January 1975, you were found guilty at General Court-Martial (GCM), of conspiracy to commit an assault with intent to commit grievous bodily harm and assault. You were sentenced to be reduced in paygrade, confined for three years, forfeiture of pay, and a Bad Conduct Discharge (BCD). On 30 May 1975, you were convicted at a special court martial (SPCM) for lifting a weapon against a commissioned officer, and UA. After completion of your appellate review, you were discharged, on 2 December 1976, with a BCD.

You previously applied to this Board for a discharge upgrade and were denied on 28 October 2022. The Board 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 contentions that you received an Other Than Honorable (OTH) discharge based on your good behavior while at the U.S. Disciplinary Barracks. For purposes of clemency and equity consideration, the Board noted you provided an advocacy letter.

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 NJP, GCM, 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 noted your offenses were violent and posed a serious safety risk to other service members. Additionally, the Board noted that your DD Form 214 states your discharge was under other than Honorable conditions but concluded this encompasses your BCD. Therefore, absent additionally evidence that substantiates your contentions, the Board was not persuaded by assertion that you received an OTH vice a BCD. The Board considered that your GCM findings and sentence were affirmed by the U.S. Navy Court of Military Review on 30 January 1976. 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. While the Board carefully considered the evidence you submitted in mitigation, 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. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. 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,

4/27/2023

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Deputy Director
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