



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. 1840-23
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 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).

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 entered active duty with the Marine Corps on 28 November 1980. During the period from 9 June 1982 and 13 August 1982, you received two non-judicial punishments (NJP) for wrongfully consuming alcohol in the barracks and wrongfully altering a military identification card (ID). On 16 August 1982, you were counseled on your frequent involvement with military authorities. On 8 December 1982, you received NJP for wrongful appropriation of two gas mask filters and wrongfully removing the gas mask filters endangering the life of a Marine. On 20 December 1982, you received a second counseling on your frequent involvement with military authorities.

During the period from 31 March 1983 and 28 May 1983, you received three NJPs for disrespect in language toward a non-commission officer (NCO), failure to go at time prescribed to appointed place of duty, and drunk and disorderly conduct.

Subsequently, you were notified of pending administrative separation action by reason of misconduct due to a pattern of misconduct. After electing to make a written statement, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge with an Other Than Honorable (OTH) characterization of service. The SA approved the CO's recommendation and directed an OTH characterization of service by reason of misconduct due to a pattern of misconduct. On 19 August 1983, you received your seventh NJP for absence from appointed place of duty. On 23 September 1983, you were so discharged.

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 contentions that you were young and immature, received several awards and achievements, and since discharge, you have been married for 39 years, a father of two, maintained employment and remained trouble free. For purposes of clemency and equity consideration, the Board noted you provided a criminal records check and a personal statement, supporting documentation describing post-service accomplishments, but no 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 seven NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact your conduct had on the good order and discipline of your command. The Board determined that the evidence of record did not show and you failed to provide any documentation to show you were not responsible for your conduct or that you should not be held accountable for your actions, which led to your characterization of service. Finally, the Board noted that a Marine's service is characterized at the time of discharge based on performance during the current enlistment. 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 of service. While the Board commends your post-discharge accomplishments and good character, 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,

4/6/2023

