



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. 1841-23
Ref: Signature Date



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 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 8 September 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, 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).

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) 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 duty on 26 June 2006. On 4 January 2007, you received nonjudicial punishment (NJP) for larceny. Subsequently, you were counseled concerning your pattern of misconduct and advised that failure to take corrective action could result in administrative separation. On 6 February 2008, you signed a pretrial agreement in which you accepted a trial by summary court martial and entered a plea of guilty for making a false official statement, six specifications of larceny, and one specification of obstruction of justice. On 25 April 2008, you were convicted by summary court martial (SCM) pursuant to your pleas. As a result of the foregoing, you were sentenced to 60 days of restriction.

On 5 June 2008, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to pattern of misconduct, at which point, you decided to submit a letter of rebuttal. On 25 June 2008, your commanding officer recommended an Other Than Honorable (OTH) discharge characterization of service by reason of misconduct due to pattern of misconduct. On 18 July 2008, your administrative separation proceedings were determined to be sufficient in law and fact. On 25 July 2008, the separation authority approved and ordered an OTH discharge characterization by reason of misconduct due to pattern of misconduct. On 13 August 2008, 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 for a discharge upgrade and contention that you and your dependents are in need of access to veterans' programs benefits and resources. The Board noted that you checked the "PTSD" and "Other Mental Health" boxes on your application but did not respond to the Board's request for supporting evidence. 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 NJP and SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact it had on the good order and discipline of your unit. The Board noted that you were given multiple opportunities to correct your deficiencies but continued to commit misconduct. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. 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,

9/19/2023

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