



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

Docket No. 2016-23
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 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, 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 3 December 1978. On 22 August 1979, you began a period of unauthorized absence (UA), which lasted 12 days, and resulted in nonjudicial punishment (NJP) on 21 November 1979. On 17 November 1980, you began a second period of UA, which lasted five days, and resulted in your second NJP on 28 November 1980. On 16 April 1981, you received a third NJP for wrongful possession of a controlled substance-marijuana. On 18 April 1981, the suspended portion from your previous NJP punishment was vacated. Between 4 May 1981 to 18 May 1981, you had two periods of UA

totaling 14 days. On 20 May 1981, the suspended portion of your previous NJP punishment was vacated. On the same date, you received a fourth NJP for two periods of UA.

As a result, you were processed for administrative separation. Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary (as is the case at present), will presume that they have properly discharged their official duties. Your Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that you were separated from the Marine Corps on 10 July 1981 with an Other Than Honorable (OTH) characterization of service, your narrative reason for separation is "Frequent Involvement (Admin Board)," your separation code is "GKA1," and your reenlistment code is "RE-4."

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 contentions that: (a) you served 80 percent of your obligation in an honorable manner; (b) you were continuously harassed by your First Sergeant since you were married to an African American woman; and (c) you are currently suffering from numerous medical issues as a result of the water contamination at Camp Lejeune. 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 NJPs, 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, although one's service is generally characterized at the time of discharge based on performance and conduct throughout the entire enlistment, the conduct or performance of duty reflected by incidents of misconduct may provide the underlying basis for discharge characterization. Finally, the Board noted you provided no evidence to substantiate your contentions. 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.

In regard to your contention concerning contaminated water at Camp Lejeune, please note that Public Law 112-154, Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012, requires the Veterans Administration to provide health care to Veterans with one or more of 15 specified illnesses or conditions. You should contact the nearest office of the Department of Veterans Affairs (VA) concerning your right to apply for benefits or appeal an earlier unfavorable determination.

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,

4/10/2023

█

Executive Director

Signed by: █