



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. 2291-23
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.

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 31 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).

You enlisted in the Marine Corps and began a period of active service on 16 March 1972. On 29 January 1973, you were convicted by a special court martial (SPCM) for willful disobedience of a lawful order, breaking restriction, and four specifications of unauthorized absence (UA). Approximately two months later, you received non-judicial punishment (NJP), on 28 March 1973, for UA. On 6 June 1973, you again received NJP for another UA. On 23 June 1973, you were counseled regarding your frequent involvement of a discreditable nature with military authorities and you were notified continued misconduct may result in the initiation of administrative separation proceedings. You received your third NJP for UA on 24 September 1973. On 28 December 1973, you were given letters of warning, and counseled regarding your violations of the uniform code of military justice (UCMJ). On 1 January 1974, you again received NJP for UA. Subsequently, on 13 February 1974, you submitted a request for separation by reason of good of the service to avoid court martial conviction for breaking restriction, and four specifications of unauthorized absence (UA). Subsequently, your request for separation in lieu of trial (SILT) by court martial was approved and directed by the separation authority. On 2 April 1974, you were discharged with an Other Than Honorable (OTH) characterization of service.

You previously applied to the Board for Correction of Naval Record (BCNR) with request to adjust your record. BCNR denied your request to upgrade your character of service, on 7 June 2021, after concluding 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 were young and you have matured after hardship. For purposes of clemency and equity consideration, the Board noted you provided advocacy letters in support of your application.

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 SILT 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 for SILT was substantial and, more likely than not, would have resulted in a punitive discharge and extensive punishment. As a result, the Board concluded you already received significant clemency from being allowed to separate with an OTH character of service instead of risking greater punishment at a court-martial. Finally, the Board considered the additional evidence you submitted regarding post-discharge character but concluded that the favorable matters you submitted for consideration were also insufficient to outweigh the severity and nature of your repeated misconduct. 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 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,

4/18/2023

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Executive Director