



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. 2825-23

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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 8 May 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 enlisted in the U.S. Marine Corps (USMC) and began a period of active duty on 19 June 1979. On 14 October 1980, you received nonjudicial punishment (NJP) for a period of unauthorized absence (UA) and for breaking restriction. On 3 February 1981, you were found guilty at a special court-martial (SPCM) of using provoking words, wrongful appropriation, assault, eight (8) specifications of UA, and communicating a threat to a 1st LT/O-2. You were sentenced to confinement at hard labor for three (3) months and to receive a Bad Conduct Discharge (BCD). While confined, you submitted a clemency/restoration request seeking remission of your BCD and to be separated with a General (Under Honorable Conditions) (GEN) characterization of service. On 19 June 1981, you withdrew the aforementioned

clemency/restoration request because you no longer desired to remain on active duty. After your SPCM sentence was affirmed, on 17 September 1982, you were discharged with a BCD.

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: (1) you experienced discrimination which led to your misconduct, (2) after the birth of your first child, your request for leave was denied without cause due to racial tension between you and your superiors, (3) you were asked to move your room without notice and were assaulted by an officer because he felt you were not packing/moving quickly enough despite your efforts, (4) you requested a court-martial and were assigned an attorney but, prior to your trial date, your attorney was transferred back to the states and your newly assigned attorney never spoke with you. As such, you felt the court proceedings occurred without your input and representation, (5) after completing your sentence of confinement for six (6) months you were sent back to your post with a gun and badge and asked to continue to perform your job as if nothing happened, (6) four months after returning to your post from confinement you were transferred stateside to █, but no longer as a military policeman, and (7) you were asked by your Sergeant Major/E-9 if you wanted to stay in the military but answered "no" because you had been treated like a criminal and were not being allowed to see your child, who at that point was over one year old, nor allowed to see or speak with your family and were given a dishonorable discharge. For purposes of clemency and equity consideration, the Board noted you did not provide 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 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. The Board was not persuaded by your arguments of racial discrimination or unfair treatment and noted that you provided no evidence to substantiate your contentions. Therefore, the Board found that your SPCM conviction was proper and supported by the evidence. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant a BCD 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 is attached 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, _____

5/22/2023

