



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. 2916-23
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 25 October 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 entered active duty with the Marine Corps on 28 May 1991. On 6 April 1992, you received non-judicial punishment (NJP) for unauthorized absence (UA) totaling 30 days. On 9 July 1992, you were formerly counseled for failing to keep your superiors informed of your whereabouts. On 24 May 1993, you were formerly counseled on being UA from your appointed place of duty. On 18 August 1993, you received NJP for UA totaling seven hours. On 20 August 1993, civil authorities tried and convicted you of felonious larceny, felonious possession of stolen goods, and possession of burglary tools. You were sentenced to confinement for three years, which was suspended, probation for five years, and fined \$2,345.00. Subsequently, you were notified of pending administrative separation action by reason of civil conviction. After you waived your rights, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge by reason of misconduct due to civil conviction with an Other Than Honorable (OTH) characterization of service. The SA approved the CO's recommendation and, on 7 October 1993, 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 served honorably, your civil conviction was not your doing, you were at the wrong place with the wrong person, and you continue to support veterans and the community. The Board noted that you checked the "PTSD" and "Other Mental Health" boxes on your application but chose not to respond to the Board's 11 April 2023 letter requesting supporting evidence for your claim. 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 and civil conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the discrediting nature of your civil misconduct to the Marine Corps. Further, the Board considered the likely negative effect your conduct had on the good order and discipline of your command. The Board also noted that your record clearly reflected your misconduct and the evidence of record did not show that you were not responsible for your conduct or that you should not be held accountable for your actions. Finally, the Board noted that there is no evidence in your record, and you submitted none, to support your contention that you were not properly convicted by the civil authorities. 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,

11/6/2023

