



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. 3085-23

Ref: Signature Date

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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 1 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 this Board. Documentary material considered by the Board consisted of your application together with all material submitted in support thereof, relevant portions of your service 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 previously submitted a petition to this Board and were denied relief on 8 August 2012.

You enlisted in the United States Marine Corps and commenced a period of active duty on 26 June 1990. On 16 September 1993, you received non-judicial punishment (NJP) for violating Uniform Code of Military Justice (UCMJ) Article 86, for absence from your appointed place of duty, Article 92, for failure to obey a lawful order by wrongfully being intoxicated while on duty section, and Article 134, by wrongfully being intoxicated and incapacitated for the proper performance of your duties. On 19 April 1994, you received your second NJP for violating UCMJ

Article 112(a), for wrongfully using a controlled substance (marijuana). On 29 April 1994, you received your third NJP for violating UCMJ Article 112(a), for wrongfully using a controlled substance (LSD), Article 91, for disrespectful language towards a non-commissioned officer, Article 128, for assaulting a fellow service member by lunging at him in a violent manner, and Article 86, for two specifications of failing to go to your appointed place of duty (urinalysis). You did not these NJPs.

On 18 July 1994, you were found guilty at Special Court Martial (SPCM) of violating UCMJ Article 86, for two specifications of failure to go at the prescribed time to your appointed place of duty, Article 92, for nine specifications of failure to obey a lawful order by failing to report for restricted muster on eight occasions, failing to report to the Squadron Adjutant, dereliction of duty, and for reporting with an unshaven face, Article 91, for using disrespectful language, and Article 134, for breaking restriction and wearing the wrong rank insignia. You were awarded a Bad Conduct Discharge, 60 days confinement, and forfeitures of pay. On 21 November 1994, you were placed on appellate leave while your case was being reviewed by the Navy and Marine Corps Court of Criminal Appeals (NMCCA). On 27 February 1996, NMCCA completed appellate review and denied relief. On 6 March 1996, you were discharged from the Marine Corps with a BCD as adjudged by the court and assigned an RE- 4 reenlistment code.

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 characterization, your assertion that you were being targeted by your command, and your argument that a punitive discharge is unjust and unduly harsh. For purposes of clemency and equity consideration, the Board noted that you did not provide documentation of your post-service accomplishments as part of this petition, but the Board considered the evidence you provided in your previous petition.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your three NJPs and SPCM conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it involved continual substance abuse during your time in service. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command. The Board determined that your conduct was contrary to Marine Corps values and policy, renders such Marine unfit for duty, and poses an unnecessary risk to the safety of fellow service members. The Board determined that the BCD remains appropriate in your case because your misconduct was a significant departure from the conduct expected of a service member. The Board also highlighted that your case receive thorough appellate review and no errors or basis for clemency was identified.

The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade, even in light of the Wilkie Memo. While the Board carefully considered the evidence you provided in mitigation, 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. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. 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,

5/9/2023

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Executive Director

Signed by: █