



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. 3761-23
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 12 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 to 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, with waivers for failing entrance testing and for a pre-service misdemeanor offense, and began a period of active duty on 21 November 1979. During your first year of service, on 12 September 1980, you were convicted by Summary Court-Martial (SCM) for violations of the Uniform Code of Military Justice (UCMJ) under Article 86 for absenting yourself from your place of duty, Article 91 for disobedience to a lawful order, and two specifications of Article 113 for sleeping on post and leaving your post before being relieved. You were administratively counseled, in December 1980, for failure to pay a debt of \$10 incurred during your wife's hospitalization and, again in April 1981, to warn you of possible disciplinary effects for losing your identification card. On 18 August 1981, you were subject to nonjudicial punishment (NJP) for a violation of Article 107 for stating, with intent to deceive a senior officer and knowing the statement to be false, that you were lying down on the deck because you had become sick and vomited.

You subsequently absented yourself without authority from 8 September 1981 through 20 October 1982. After your voluntary return, you were convicted by Special Court-Martial

(SPCM) for another violation of Article 86 and sentenced to 3 months' confinement and a Bad Conduct Discharge (BCD). The findings and sentence of your SPCM were affirmed upon appellate review with no assignments of error, and your punitive discharge was effected on 18 July 1983.

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 punitive discharge and your contention that you weren't treated fairly with respect to extenuating circumstances of your misconduct. Specifically, you state that your absence was justified because you left to take care of your dependent children and ensure that they were placed into a good home to ensure they would have a fair chance at life. 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, SCM, 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 also noted that you did not submit any evidence to substantiate your contentions. Therefore, the Board determined you were properly convicted by a SPCM and awarded a BCD. 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,

5/26/2023

