



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. 3838-23
7868-97
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 on 13 December 2023, has carefully examined your current request. The names and votes of the members of the panel 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 previously applied to this Board for a discharge upgrade but were denied on 6 May 1998. The Board determined the mitigation evidence you submitted in support of your request was insufficient to offset the seriousness of your misconduct. In addition, your requests for reconsideration were denied without a hearing on 25 June 1999, 28 October 1999, and 14 March 2012 based on lack of new evidence.

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 for an Honorable discharge, change to your separation and reentry codes, and back pay. You contend that you were under duress and threatened, sick due to drinking contaminated water at Camp Lejeune, not provided legal counsel, underage, and your enlistment application was not signed. Additionally, the Board noted you checked the “PTSD” and “Other Mental Health” boxes on your application but chose not to respond to the 24 May 2023 letter from the Board requesting supporting evidence of 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 Good of the Service (GOS) discharge, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the negative impact your conduct had on the good order and discipline of your unit. Further, the Board noted that there is no evidence in your record, and you submitted none, to substantiate your contentions. The Board also noted that 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. Contrary to your contention that you did not receive legal counsel, the record clearly shows that you requested GOS discharge in lieu of trial by court-martial and stated in your request that “I have been afforded the opportunity to consult with counsel.” Finally, the Board noted that the misconduct which led to your request to be discharged in lieu of trial by court-martial was substantial and, more likely than not, would have resulted in a punitive discharge and extensive punishment at a court-martial. Therefore, the Board determined you already received a large measure of clemency when the Marine Corps agreed to administratively separate you for the GOS; thereby sparing you the stigma of a court-martial conviction and likely punitive discharge.

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 of service. 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 your request does not merit relief.

For your information, Public Law 112-154, “Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012,” requires the Veterans Administration to provide health care to veterans with one or more of 15 specified illnesses or conditions. You should contact the nearest office of the VA concerning your right to apply for benefits or appeal an earlier unfavorable determination.

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,

12/26/2023



Executive Director

Signed by:

