



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

██████████
Docket No. 6139-23

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.

Although you did not file your application in a timely manner, the statute of limitation was waived in accordance with the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo). A three-member panel of the Board, sitting in executive session, considered your application on 18 January 2024. 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 this 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, applicable statutes, regulations, and policies, to include the Kurta Memo and 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.

A review of your record shows that you enlisted in the Marine Corps and entered active duty on 26 November 1976. On 20 September 1977, you underwent a non-judicial punishment (NJP) for violating Article 86, unauthorized absence (UA) of the Uniform Code of Military Justice (UCMJ), for being UA 11-12 September 1977. You underwent a psychological evaluation on 11 October 1977; the provider noted you had multiple disciplinary problems, you wanted to leave the Marine Corps in order to go home to help your family, and that you believed you were being persecuted by your command. The provider found you fit for duty, diagnosed you with

immature personality, a condition not a disability, and recommend administrative separation for unsuitability. You subsequently went UA again in December 1977. On 24 February 1978 you underwent a special-court martial for nine specifications of UA; and violating Articles 89, 90, 91, 92, 113, 128, and 134 of the UCMJ. You were found not guilty on Articles 128 and 134, Article 92 was dismissed by the military judge, and you were found guilty regarding the other violations resulting in confinement for three months, forfeiture of pay, reduction in rank and a Bad Conduct Discharge (BCD). You were released from confinement in May 1978 and subsequently underwent two more NJPs on 10 May and 8 June 1978. On 13 June 1978 you were granted leave pending completion of appellate review of your special court-martial. Your special court-martial finding was confirmed, and you were discharged with a BCD on 11 July 1979.

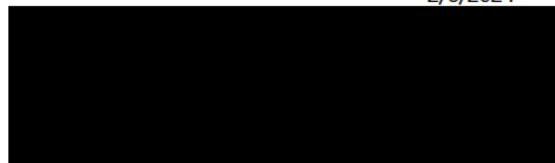
You request the Board upgrade your discharge to an honorable or medical discharge due to having a service-connect disability, flat feet. The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Kurta and Wilkie Memos. These included, but were not limited to, your desire for a discharge upgrade or disability discharge and contentions that you deserve a medical discharge because you suffered from a condition while in-service. For purposes of clemency and equity consideration, the Board noted you did not provide any evidence of the medical condition, how your alleged condition contributed to your misconduct discharge, and post-service accomplishment.

Even in light of the Wilkie Memo and reviewing the record holistically, the Board found that your misconduct outweighed any mitigating factors and determined there was no error or injustice that warrants granting you the relief you requested or granting relief as a matter of clemency or equity.

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,

2/6/2024

A large black rectangular redaction box covering the signature and name of the Deputy Director.

Deputy Director

Signed by: 