



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. 6364-23
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 13 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 to 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 the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Marine Corps and began a period of active duty on 15 June 1982. You were subject to nonjudicial punishment (NJP) on 16 May 1983 for violations of the Uniform Code of Military Justice (UCMJ) under Article 86, for going from your appointed place of duty without authority, and Article 90, for willfully disobeying an officer's command not to go out in town. On 1 February 1984, you received your second NJP for another violation under Article 86 for failure to go at the time prescribed to field day. Subsequently, you were issued administrative counseling for poor attitude, lack of integrity, lack of honesty, poor performance, and failure to abide rules and regulations. On 7 August 1984, your platoon commanded recommended your administrative separation, stating that you had been "continuously counseled" by your senior leadership, who spent an "inordinate amount of time" trying to help you improve, but your performance remained marginal and you required constant supervision. Meanwhile, you were

subject to a third NJP, on 31 July 1984, for another violation under Article 86 of the UCMJ for failure to go at the time prescribed to your appointed place of duty and remaining absent for the majority of the work day.

On 16 November 1984, you were notified of separation proceedings by reason of misconduct due to a pattern of misconduct. You requested representation by legal counsel at a hearing before an administrative board, which convened on 2 January 1985, found the basis for separation supported by a preponderance of the evidence, and recommended your separation under Other Than Honorable (OTH) conditions. Commanding General, 1st Marine Division, approved this recommendation, and you were discharged under OTH conditions on 7 February 1985.

Your previous application to the Naval Discharge Review Board (NDRB), in which you cited outstanding post-service conduct as the basis for requesting relief, was considered on 11 September 1995. The summary of the NDRB review reflects that you contended you “demonstrated a willingness to be a good citizen and to assist the community in providing a business enterprise that is reputable and assists other citizens with their legal problems” to include voluntary contributions in the form of seminars to assist in educating the public. The Board notes that supporting evidence which you might have previously submitted to the NDRB is not retained in your official records and, therefore, not available for the Board’s review. However, the NDRB granted relief on the basis of equity with respect to your post-service accomplishments up to that time, upgrading your discharge to General (Under Honorable Conditions) (GEN) in addition to correcting your narrative reason for separation to reflect that you had requested and received a hearing before an administrative separation board.

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 have grown from your experiences in the military, have represented veterans in opening up to businesses, are achieving things since your discharge, and are more focused now due to your treatment for post-traumatic stress disorder (PTSD). The Board noted that you did not contend that PTSD contributed to the circumstances of your misconduct, nor did you provide medical evidence with respect to such diagnosis; therefore, the Board did not request an advisory opinion regarding your reference to treatment for unspecified PTSD. For purposes of clemency and equity consideration, the Board noted that, although you previously submitted evidence of post-discharge accomplishments to the NDRB for which relief was already granted, you did not submit any supplemental evidence in support of your contentions of post-discharge accomplishments since that time.

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, 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. Additionally, the Board noted you already received a large measure of clemency from the NDRB when they chose to upgrade your characterization of service to GEN based on your post-discharge accomplishments. Absent any new evidence, the Board concluded significant negative aspects of your service outweigh the positive aspects and continues to warrant a GEN characterization. While the Board commends your post-discharge

accomplishments, 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,

10/31/2023

