



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

█
Docket No. 6639-23
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 father's 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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 2 February 2024. 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 the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice or clemency determinations (Wilkie Memo).

You entered active duty with the Marine Corps on 19 July 1977. On 21 July 1978 and 7 December 1978, you received non-judicial punishments (NJP) for absence from appointed place of duty and failure to go at time prescribed to appointed place of duty. Between 16 January 1979 and 14 June 1979, you received four NJPs for two specifications of unauthorized absence (UA) totaling three days, missing movement, four specifications of absence from appointed place of duty, and possession of marijuana. On 19 October 1979, a special court-martial (SPCM) convicted you of UA totaling 30 days, disrespect in language toward a non-commission officer (NCO), carrying a concealed weapon, and missing movement. You were sentenced to confinement for 120 days, forfeiture of pay, and a Bad Conduct Discharge (BCD). After the BCD was approved at all levels of review, on 6 January 1981, you were so discharged.

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 were young and made a mistake, your BCD was too harsh and not warranted, and you have been successful post-discharge. The Board noted that you checked the "PTSD" box on your application but did not respond to the Board's 11 August 2023 request for supporting evidence. For purposes of clemency and equity consideration, the Board noted you provided post-service medical records documenting test results but no 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 SPCM, outweighed the mitigating evidence in your case. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved a drug related offense. The Board determined that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. Further, the Board noted that your record clearly reflected your misconduct and 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. Finally, the Board noted that your punishment was a direct result of your actions, which resulted in several NJPs and violation of the Navy's drug policy. Therefore, the Board was not persuaded by your argument of unfairness. 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. While the Board carefully considered the evidence you submitted 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 mitigated 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,

2/13/2024

