



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

█
Docket No. 7463-23
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 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 15 November 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 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 29 August 1994. On 28 March 1996, a special court-martial (SPCM) convicted you of wrongfully appropriating an ATM card, two specifications of larceny of money totaling \$546.75, and wrongfully opening certain mail matter. On 25 October 1996, you received NJP for two specifications of underage drinking and driving a vehicle without insurance. On 19 March 1997, a summary court-martial (SCM) convicted you of assault on a non-commissioned officer (NCO), drinking alcohol while on restriction, failure to be in an appropriate uniform, and wrongfully appropriating a hockey stick from another Marine. Subsequently, you were notified of pending administrative separation action by reason of a pattern of misconduct. After you waived your rights, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge by reason of misconduct due to a pattern of misconduct with an Other Than Honorable (OTH) characterization of service. The SA approved the CO's recommendation and directed an OTH characterization of service by reason of misconduct due to a pattern of misconduct. On 29 August 1997, 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 served honorably in the Marine-Corps, you were treated unfairly and not allowed a chance to redeem yourself, other people set you up, and you would like veterans benefits. For purposes of clemency and equity consideration, the Board noted you provided advocacy letters describing post-service character and accomplishments.

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, SPCM and SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact your conduct had on the good order and discipline of your command. Further, the Board noted that there is no evidence in your record, and you submitted none, to substantiate your contentions of being treated unfairly and not having a chance to redeem yourself. The Board noted you were retained in the Marine Corps after your SPCM conviction and continued to commit misconduct. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. 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. While the Board carefully considered the evidence you submitted in mitigation and commends you for your post-discharge good character and conduct, 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 upgrading your characterization of service. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. Accordingly, given the totality of the circumstances, the Board determined 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,

12/14/2023

