



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

■
Docket No. 7672-23
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 29 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 enlisted in the Marine Corps and began a period of active duty on 29 September 1979. On 6 February 1980, you received non-judicial punishment (NJP) for unauthorized absence (UA), a period totaling 32 days. On 26 May 1981, you commenced a period of UA that concluded upon your surrender to military authorities on 13 August 1984, a period totaling 1,172 days.

During the period from 15 November 1984 to 5 December 1984, you were admitted to the naval hospital and diagnosed with seizure disorder and Atrial Septal Defect (ASD). On 22 January 1985, you received a medical procedure repairing your ASD. On 30 January 1985, you were medically cleared for discharge from the naval hospital. On 13 March 1985, you were placed in a temporary physical profile due to the physical defects of a seizure disorder and having open-heart surgery.

On 16 April 1985, you submitted a written request for separation in lieu of trial (SILT) by court-martial for the foregoing period of UA. Prior to submitting this request, you conferred with a

military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. As part of this discharge request, you admitted your guilt to the foregoing offense and acknowledged that your characterization of service upon discharge would be Other Than Honorable (OTH) conditions. The separation authority approved your request and directed your commanding officer to discharge you with an OTH characterization of service. On 8 May 1985, you were so discharged.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 2 October 1995, based on their determination that your discharge was proper as issued.

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 change your discharge character of service to Honorable so you may apply for disability benefits. You contend that: (1) you were treated unfairly, (2) you sustained several seizures in-service and no one in the military tried to understand your health condition and help you, (3) after your arrival at Camp Lejeune, you became ill from drinking the water and eating the food; thereafter, your illness continued with occurrences of seizures, (4) you experienced anxiety, depression, and continued to have seizures based on the passing of your mother, (5) you were stationed overseas and received an emergency phone call concerning the passing of your mother, you were granted emergency to attend your mother's funeral, after your mother's funeral, you developed a fear of going back to the military and at that point, you remained under a doctor's care and was diagnosed with grand-mal seizures, and (6) due to your medical condition at that time, you desire a change to your character of service in order for you to be able to obtain medical treatment from the Department of Veterans Affairs. For purposes of clemency and equity consideration, the Board noted you provided a personal statement on your behalf but no supporting documentation describing post-service accomplishments or advocacy letters.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP and SILT request, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded that it showed a complete disregard of military authority and regulations. The Board also noted that the misconduct that 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 that you already received a large measure of clemency when the convening authority agreed to administratively separate you in lieu of trial by court-martial; thereby sparing you the stigma of a court-martial conviction and likely punitive discharge. Further, the Board noted that you did not provide any evidence, other than your statement, to substantiate your contentions. 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. 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.

Regarding your assertion concerning █, Honoring America's Veterans and Caring for █ 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 Department of Veterans Affairs (DVA) 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,

12/14/2023

