



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. 7928-23
Ref: Signature Date

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Dear █

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 submitted within the statute of limitations, the Board found it in the interest of justice to review your request. A three-member panel of the Board, sitting in executive session, considered your application on 29 January 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 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, 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 United States Marine Corps and commenced a period of active duty on 13 December 1972. On your enlistment application, you did not disclose pre-service misconduct. However, on 22 February 1973, you were granted a fraudulent enlistment waiver related to your pre-service arrest record, to include turning over a police car and soliciting without a permit. You entered service with the Military Occupational Specialty (MOS) of 9900 (General Service Marine). After completing the Basic Food Service Course on 20 June 1973, your MOS was changed to 3371 (Cook). For the remainder of your service, you served as a 3371 (Cook) with collateral duties as a Security Guard.

Over the course of your service, you were held accountable for multiple disciplinary infractions. On 8 June 1973, you received your first non-judicial punishment (NJP) for violating Uniform Code of Military Justice (UCMJ) Article 86, for a period of unauthorized absence (UA) from your appointed place of duty. On 11 July 1973, you received your second NJP for violating UCMJ,

Article 113, for sleeping on post, while posted as a sentinel. On 10 August 1973, you received your third NJP for violating UCMJ Article 86, for two specifications of UA from your appointed place of duty, and Article 92, for failure to obey a regulation by possessing 3.0 grams of marijuana. On 17 August 1973, you received your fourth NJP for violating UCMJ Article 92, for failure to obey an order by not removing two toothpicks from your hair. You did not appeal your NJPs.

On 21 August 1973, a medical board directed your discharge due to physical disability (Fracture, Femoral, derangement of an old fracture). You were determined to be unfit for retention in the service by reason of a physical disability and that such disability was not incurred in nor aggravated by a period of active service. You were informed of the board's findings and waived your right to a full hearing in front of a Physical Evaluation Board.

On 22 August 1973, you received your fifth NJP for violating UCMJ Article 91, for using disrespectful language. Finally, on 21 September 1973, you were found guilty at Summary Court Martial (SCM) of violating UCMJ Article 92, for possession of 22.0 grams of marijuana, and Article 86, for three specifications of absence from an appointed place of duty, and breaking restriction. You were sentenced to forfeitures of pay and 30 days of confinement. Ultimately, on 12 October 1973, you were separated from the Marine Corps due to "Disability (Medical Board)" with and assigned a General (Under Honorable Conditions) (GEN) characterization of service and an RE- 4 reentry code.

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: (1) your desire to change your discharge characterization and your MOS, (2) your contention that you were in pain due to your injury which resulted in your inability to perform your duties, and (3) the impact that your pain had on your conduct, to include self-medicating with drugs and alcohol. For purposes of clemency and equity consideration, the Board noted that you did not provide advocacy letters or documentation of post-service accomplishments.

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 NJPs and your SCM conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it involved two drug offenses. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command. The Board determined that illegal drug use is contrary to Marine Corps values and policy, renders such Marine unfit for duty, and poses an unnecessary risk to the safety of fellow service members. A characterization under GEN conditions is appropriate when significant negative aspects of a member's service outweigh the positive. The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board highlighted that your characterization was based on a series of infractions, not a one-time incident. Further, by your own admission, you were informed at the time of service that you would be receiving a "Medical Under Honorable Conditions" discharge,



which is in fact what you received. The Board also reviewed your record and determined that the Specialty Number and Title of 3371 (Cook) is the correct MOS based on the evidence. There is no evidence that you qualified for or were assigned the MOS of 8152 (Marine Corps Security Force Guard). Marines are often assigned security guard detail as a collateral duty, but this does not change their MOS.

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 determined that there was no impropriety or inequity in your discharge, and even under the liberal consideration standard, the Board concluded that your misconduct clearly merited your receipt of a GEN characterization of service. 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 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,

2/9/2024

