



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. 8619-23
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 30 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).

You enlisted in the Marine Corps and began a period of active duty on 29 December 2008. You served without incident for over 32 months before being placed into confinement, on 6 October 2011, due to violation of a Military Protective Order (MPO). Subsequently, on 17 November 2011, you accepted nonjudicial punishment (NJP) for violations of the Uniform Code of Military Justice which included an offense under Article 90 due to your violation of the MPO's restriction from initiating any contact or communication with your spouse and three specifications under Article 128 for assault against your wife by striking her on the cheek, running over her toe while attempting to leave the residence as she stood in front of the car, and slashing her purse with a knife while it was still in her hands. At that time, you were notified of processing for administrative separation. Although complete records of those administrative proceedings is not documented in your service record, a naval letter reflects that you were recommended for separation under honorable conditions by reason of misconduct due to commission of a serious offense, which was suspended upon consideration of your potential for rehabilitation.

In December of 2011, you were administratively counseled for a violation of Article 90 by willfully disobeying a superior commissioned officer for not showing up to restriction muster and, through negligence, failing to show up at the designated time and place due to not waking up on time. A recommendation was made, on 13 March 2012, to vacate your suspended discharge, referencing that your previous NJP had occurred after being temporarily detained by Japanese police along with three additional offenses in the months since your suspended separation. Specifically, on 20 February 2012, you were absent from a holiday weekend accountability muster, on 22 February, you were absent from morning physical training and placed on a liberty risk program, and, on 16 March 2012, while assigned to a liberty risk program, you proceeded off base in civilian attire, consumed alcohol, and returned to the base driven by an intoxicated civilian. You received a second NJP for those offenses. Subsequently, on 29 March 2012, were notified of separation proceedings for misconduct due to commission of a serious offense due to the subsequent offenses. You elected to waive your hearing before an administrative board incident to the second proceedings and a recommendation for your Other Than Honorable (OTH) separation was forwarded for review. Commanding General, ██████████ Marine Logistics Group, approved your separation, and you were discharged on 14 May 2012.

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 to “Honorable” and change your narrative reason for separation to “Secretarial Authority.” You contend that you regret the offenses of unauthorized absence and liberty violations which resulted in your second NJP and administrative separation. However, you argue that these offenses would have been viewed as minor, in light of your overall record of service, but for the false allegations made by your former spouse. You assert that those allegations were never properly investigated and you submitted evidence of post-discharge character for consideration of clemency and to support your contention that the original allegations were false. For purposes of clemency and equity consideration, the Board considered the evidence you submitted in support of your application.

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. Although the Board noted your current contrition with respect to the latter offenses, the Board found the available evidence regarding the assault allegations involving your former spouse of significant severity; observing that one of those offenses involved use of a deadly weapon and another involved the potential for grievous bodily harm due to involving a motor vehicle. The Board also noted that you had the right to refuse NJP and contest the validity of the charges but chose not to do so. Although you contend that the charges were not investigated, the Board found insufficient evidence to support this contention. Under a presumption of regularity, allegations of domestic violence are subject to mandatory review by the Marine Corps’ Family Advocacy Program, which would have applied in your case. Without amplifying information to counter the severity of the offenses documented in your record, such as Family Advocacy records, the police report from the arrest, or the detailed records of your first administrative separation regarding the testimony pertaining to those allegations, the Board found the available evidence insufficient to substantiate your contentions. Finally, the Board noted that you were given an opportunity to correct your conduct after your original discharge was suspended; however, you chose to continue your serious misconduct that led to your OTH

discharge. 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 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. 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 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,

11/20/2023

