



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. 8846-23
Ref: Signature Date

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Dear █

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 15 December 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 13 November 1968. You served in combat operations in the Republic of █ beginning 12 May 1969. On 2 October 1969, you were convicted by Special Court-Martial for a violation of the Uniform Code of Military Justice (UCMJ) under Article 99 for, in the presence of the enemy, endangering the safety of your platoon, which it was your duty to defend by disobeying an order from a staff noncommissioned officer to establish a listening post. However, a portion of your punishment was suspended after noting that you were not the senior Marine present when the order was issued.

On 5 February 1970, you were medically evacuated after injuring your back during combat operations. Your injury was reviewed by a Medical Board, with a report in July of 1970 that you would be retained in a limited duty status pending further review of your injury and progress. Following your performance in combat, you were recognized for heroic actions on the battlefield and recommended for the award of the Bronze Star Medal (BSM) with combat "V" for valor.

That award was routed and approved but, ultimately, not delivered. First, you were subject to nonjudicial punishment on 28 August 1970, for a violation of Article 92 of the UCMJ due to leaving your rifle unlocked and unsupervised. Then, on 13 October 1970, you were arrested by civil authorities on two counts of first degree murder with malicious intent and one count of assault with a deadly weapon with intent to kill. As a result of your arrest and confession to those offenses, your award was withheld in accordance with Service policy. You were later convicted of those offenses by civil authority consistent with your plea of guilty and sentenced to confinement in the hands of civil authorities. Due to your lengthy civil confinement, you were notified of administrative separation by reason of unfitness / misconduct on the basis of your civil conviction for a felony punishable by 20 years imprisonment. You requested representation by military defense counsel at a hearing before an administrative board to consider your proposed separation. Your administrative board proceeded, per your request, although you were in absentia due to incarceration. The members of the administrative board found that the basis for your separation was substantiated by a preponderance of the evidence and recommended an undesirable discharge. This recommendation was processed through legal review and, following approval by Commanding General, 2d Marine Division, you were discharged in absentia on 18 May 1971.

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 in anticipation of your potential release from incarceration, as well as your contentions that you enlisted when you were only 17 to support the war effort and served honorably in combat prior to your arrest and conviction. You feel that your experience in the war destroyed your life and acknowledge that it took you several years after the stress of combat to collect yourself. However, you state that you have become a model person in the past 53 years of your serving your prison sentence and, even though you do not believe your discharge was wrong, in the sense of being unjust at the time, you request mercy because you are no longer that person. For purposes of clemency and equity consideration, the Board noted you did not provide 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 NJP, SPCM, and civil conviction, 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. Further, the Board considered the likely discrediting effect your civil conviction had on the Marine Corps. Additionally, the Board observed that you currently remain in confinement and, more significantly, have not submitted documentary evidence of your behavior or accomplishments during your incarceration, such as evidence of rehabilitative or vocational training and preparatory efforts toward your potential reintegration into society. 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.

To the extent that you expressed concern regarding the availability of services or support in the event of your potential release or parole from civil confinement, the Board noted that you may be eligible for mental health care and services from Department of Veterans Affairs (VA). The Board recommends that, if or when you are released from civil confinement, you contact your local VA facility to determine any services to which you may be entitled.

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,

1/17/2024

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