



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

█
Docket No. 9060-23
Ref: Signature Date



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 you did not file your application 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 27 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 Navy and began a period of active duty on 28 June 1978. On 6 September 1978, you received your first nonjudicial punishment (NJP) for assault. On 2 December 1980, you were found guilty at a special court-martial (SPCM) of a period of unauthorized absence (UA) totaling 634 days and were sentenced to forfeit \$200.00 pay per month for four months, confinement at hard labor for four months, and a Bad Conduct Discharge (BCD). However, the BCD was suspended for six months.

From February to July 1982, you tested positive for cocaine once and for marijuana on multiple occasions, and were eventually diagnosed as a habitual user of illegal drugs. On 29 June 1982, you were arrested by the █ Sheriff Department for driving under the influence. Consequently, you were notified of your pending administrative processing by reason of frequent involvement of a discreditable nature with military authorities and elected your right to have your case heard before an administrative discharge board (ADB). An ADB was convened on 20 October 1982, found you committed misconduct, and recommended you be discharged with an Other Than Honorable (OTH) characterization of service. On 27 October 1982, you received another NJP for violating a lawful order. Ultimately, on 30 November 1982,

you were discharged with an OTH by reason of frequent involvement of a discreditable nature with military authorities.

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: (1) you thought you received a General (Under Honorable Conditions) characterization of service, (2) what happened to you was partially your fault as you were young and not able to deal with certain issues, (3) you were headed down the wrong path but can also blame the [Marine] Corps for not having the facilities they now have to handle those in need of help, (4) today's treatment seems more readily available than it was in the 1980s, (5) DADT (Don't Ask, Don't Tell) took a toll on you and caused some of the issues you faced, and (6) all you are asking for is a change in wording in order to get the treatment you may need in the future. 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 NJPs and SPCM, 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. Additionally, the Board found you were already afforded a large measure of clemency when the Marine Corps suspended and remitted your BCD. Despite the fact you were given multiple opportunities to correct your deficiencies, you chose to continue to commit misconduct. The Board found no evidence that your misconduct was not intentional or that you were not mentally responsible for your misconduct. Concerning your DADT assertion, the Board noted you did not provide amplifying information to support this contention and there was no information contained in your service to indicate you were processed for DADT. 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.

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,

12/6/2023

