



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

█
Docket No. 9063-23
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 10 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 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).

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the U.S. Marine Corps on 24 October 1974. You received non-judicial punishment, on 28 May 1975, for disrespectful in language toward a corporal. On 10 June 1975, you received your second NJP for failure to go to your appointed place of duty. Then, on 30 July 1975, you were found guilty at special court-martial (SPCM) for three specifications of failure to go to your appointed place of duty. However, on 12 December 1975, the convening authority, disapproved the sentence from your 30 July 1975 SPCM and dismissed the charges. However, on 1 April 1976, you were found guilty at SPCM, for disrespectful in deportment toward a staff sergeant and failure to obey a lawful order.

On 4 August 1976, charges were preferred to SPCM for 10 hours, 3 hours, 18 hours unauthorized absence (UA), failure to go to your appointed place of duty, failure to obey a lawful order, damage to government property, theft, and failure to obey a lawful general order. On 19 August 1976, through military counsel, you requested a separation in lieu of trial (SILT) with an Other Than Honorable (OTH) characterization for the earlier described misconduct. Your SILT request was approved by the Separation Authority and you were so discharged on 24 September 1976.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for relief. The NDRB denied your requests, on 14 July 1977 and 25 January 1980, after determining 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 for an upgrade in your characterization of service and contentions that the change should be made because you served, survived despite being undesirable, your mother was wrong about you being ready for military service, and that nobody has done to you what you haven't already done to yourself. 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, SPCM and SILT request, 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 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 considered that you were given multiple opportunities to correct your deficiencies but chose to continue to commit misconduct. Finally, the Board noted you provided no evidence to substantiate your contentions. 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. 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, _____
1/23/2024

[REDACTED]

Executive Director

Signed by: [REDACTED]