



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

██████████
Docket No. 9403-23

Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 29 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 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 Marine Corps and commenced a period of active duty on 25 November 1980. Between 2 September 1981 to 22 September 1981, you were counseled on three occasions regarding your failure to meet Marine Corps physical training standards, drug related misconduct, and failure to obey a lawful order. On 25 September 1981, you received non-judicial punishment (NJP) for possession of marijuana seeds, and having ammunition in your wall locker. You were again counseled, on 23 November 1981, for your frequent involvement with military authorities for drug abuse. On 12 November 1982, you were counseled on a fourth occasion for unauthorized absence (UA) from your appointed place of duty. You received your second NJP, on 18 October 1983, for three specifications of UA from your appointed place of duty. A portion of your punishment was suspended. You were then counseled regarding your refusal to attend PT, and your worsening performance on 8 November 1983. On 15 November 1983, the suspended portion of your punishment from your 18 October 1983 NJP was vacated due to your continued misconduct. You were again counseled on two additional occasions based on your continued misconduct. You received three additional NJPs, on 16 February 1984, 30 March 1984, and 1 August 1984, for multiple specifications of UA, and larceny.

Consequently, you were notified of the initiation of administrative separation proceedings as a result of misconduct due to minor disciplinary infractions. You elected your right to consult with counsel but waived a hearing of your case before an Administrative Discharge Board. Your commanding officer recommended your separation from naval service with an Other Than Honorable (OTH) character of service. The separation authority approved and directed your discharge, with an OTH character of service by reason of misconduct due to minor disciplinary infractions. On 12 October 1984, you were so discharged.

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 characterization. You contend you were discharged due to minor disciplinary infractions shortly before the end of your enlistment and would like to be eligible for veteran's benefits. 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 your 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. The Board also considered that you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct. 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.

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,

12/20/2023

