



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

█
Docket No. 10173-23
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 3 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).

You enlisted in the Marine Corps and commenced active duty on 21 October 1957. On 27 May 1958, you received non-judicial punishment (NJP) for disrespectful deportment toward a superior non-commissioned officer and two specifications of unauthorized absence (UA). On 31 July 1958, your command requested a psychiatric evaluation due to your "various refusals to work, requests for a Bad Conduct Discharge, and complaints concerning [your] general attitude and appearance." You did not receive a psychiatric diagnosis and the Base Psychiatrist noted you were not likely to accept military discipline or personal responsibility. Subsequently, you submitted a statement indicating that your chain of command's attempts to help you were not working and that you desired a discharge.

On 13 August 1958, you were found guilty at Summary Court Martial (SCM) of three specifications of UA. You were awarded forfeitures of pay and sixty days of restriction. While on restriction, you refused or failed to muster four times, mustered in inappropriate attire (e.g., pajamas, shorts, civilian clothes) eleven times, were insubordinate to a non-commissioned

officer, were absent from work four times, and were UA six times, one of which ended in your apprehension by military police.

On 10 October 1958, you appeared before the Unfitness and Misconduct Discharge Board and informed them that you “quit working because [you] wanted out of the Marine Corps and felt this was the best way to get out.” The Board recommended you be discharged by reason of unfitness due to being repeatedly in a disciplinary status because of infractions of regulations and/or commission of offenses. The Separation Authority concurred and on 21 October 1958, you were discharged with an under Other Than Honorable conditions (OTH) characterization of service.

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 change your discharge characterization of service and your contentions that you were young and immature, you served honorably, and you want to be buried with honors. For purposes of clemency and equity consideration, the Board noted you did not provide supporting 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 NJP, SCM, and general refusal to follow any orders near the end of your service, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact your repeated misconduct had on the good order and discipline of your command. With regard to your claim that your misconduct was the result of your youth, the Board felt that your record clearly reflected your willful misconduct and demonstrated you were unfit for further service. Further, the Board noted that you were given multiple opportunities to address your conduct issues and that your chain of command attempted to assist you throughout your relatively brief time on active duty, but you continued to commit misconduct, specifically, to effectuate your discharge. Therefore, the Board found no evidence to support your contention that you served honorably. 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,

1/26/2024

