



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. 10506-23

Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 5 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, 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 began a period of active duty on 29 July 1974. Upon your enlistment, you disclosed a preservice arrest, confinement, numerous traffic violations, and a period of probation as a result of your arrest for burglary. On 27 August 1974, an FBI record indicated that you failed to disclose a preservice arrest for possession of dangerous drugs. On 8 October 1974, you were notified of the initiation of administrative separation proceedings by reason of fraudulent entry, at which point, you decided to waive your procedural rights. On the same date, your commanding officer (CO) recommended that you be retained in the Marine Corps. On the same date, a medical officer found no psychiatric diagnosis or previous medical treatment. On 13 October 1974, your CO recommended that you were retained in the Marine Corps. On 16 October 1974, your administrative separation proceedings were determined to be sufficient in law and fact. On the same date, the separation authority approved and ordered that your retention in the Marine Corps.

On 11 March 1975, you received nonjudicial punishment (NJP) for failure to report to your prescribed place of duty. On 2 May 1975, you began a period of unauthorized absence (UA) which lasted one-day and resulted in your second NJP. On 14 June 1975, you were charged with stealing a radio cassette turntable unit of a value of \$200.00, property of a fellow Marine. You were also charged with unlawfully receiving a radio cassette turntable unit, despite knowing it had been stolen. On 1 July 1975, you requested a discharge for the good of service in lieu of trial by court martial. On 2 July 1975, your administrative separation proceedings were determined to be sufficient in law and fact. On 23 July 1975, the separation authority approved your request for a discharge for the good of service in lieu of trial by court martial. On 13 August 1975, you began a second period of UA which lasted 27 days and resulted in your third NJP. On 16 September 1975, you were discharged with an Other Than Honorable (OTH) discharge characterization of service in lieu of trial by court martial.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for relief. The NDRB denied your request, on 3 December 1979, 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 a discharge upgrade and contentions that: (a) you developed a drinking habit as a result of discrimination and mistreatment while in service, (b) aside from your one misconduct incident, you never got in trouble, (c) you will like to qualify for Department of Veterans Affairs (VA) benefits, (d) you have been sober for nearly 17 years and lived a clean life. For purposes of clemency and equity consideration, the Board noted you did provide copies of your VA Statement of Claim Form, a letter from your provider, four character letters of support, two certificates of completion, one certificate of appreciation, and portions of your OMPF record.

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 request to be discharged in lieu of trial by court martial, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact it had on the good order and discipline of your unit. 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, 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. Finally, the Board was not persuaded by your arguments that your active duty misconduct was due to the racial discrimination and mistreatment you received in the Marine Corps. The Board noted that you entered the Marine Corps with a long history of misconduct that included burglary and drug offenses; misconduct that you continued during your relatively brief period of active duty. 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. While the Board carefully considered the evidence you submitted in mitigation and commends you for your post-discharge accomplishments, 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. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. 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 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

