



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. 74-24
Ref: Signature Date

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Dear █:

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 2 February 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 a period of active duty on 4 May 1987. On 13 October 1990, you received non-judicial punishment (NJP) for unauthorized absence (UA), disobeying an order of a Gunnery Sergeant, and displaying conduct unbecoming of a non-commissioned officer. On 22 May 1991, you received a second NJP for twice willfully disobeying the order of a First Sergeant. Shortly thereafter you commenced a period of UA, on 30 July 1991, that continued until your surrender, over eight years later, on 27 October 1999. In the interim, on 9 September 1991, you were declared a military deserter. Following your surrender, you were convicted at Special Court-Martial (SPCM) of Article 86 of the Uniform Code of Military Justice (UCMJ) for UA. You were sentenced to 30 days of restriction, 30 days of hard labor without confinement, forfeiture of \$639.00 pay per month for six months, reduction to E-1, and a Bad Conduct Discharge (BCD). After completion of all levels of review, on 4 October 2001, you were discharged with a BCD.

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 change and your narrative reason for separation and separation code to "Secretarial Authority." You contend that: (1) you have been sufficiently punished for your misconduct that occurred over two decades ago, (2) you are repentant about your misconduct during your time as a Marine and still speak proudly of your military service, and (3) your discharge will continue to burden you and your family until it is corrected.

For purposes of clemency and equity consideration, the Board considered your counsel's brief, and the additional supporting documentation you provided, including your DD Form 214 and various service record documents. 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's and court-martial, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved an eight-year absence from your appointed place of duty. The Board also considered the negative impact this absence likely had on your shipmates and on the good order and discipline of your command.

As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant a BCD characterization. While the Board carefully considered the evidence you submitted in mitigation, the Board noted you provided no information upon which they could rely to assess your post-discharge accomplishments or character to determine whether clemency may be appropriate. In this regard, a current detailed personal statement, and advocacy letters, whether from employers or other credible sources, may assist the Board in determining whether clemency could be appropriate. However, as your case stands, 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 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,

2/27/2024

