



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. 10408-23
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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 31 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 began a period of active duty on 21 April 1998. Within your first six months of service, you absented yourself without authority and remained absent for a period of 109 days from 13 October 1998 until 1 February 1999. After your return, you received administrative counseling regarding your unauthorized absence (UA) and the potential for administrative discharge under adverse circumstances if your misconduct continued. However, you continued your pattern of extended UAs with two additional periods from 19 April 1999 through 11 June 1999 then from 16 August 1999 through 2 November 1999. Following the third period of UA, you were apprehended and returned to military control for disposition of charges before Special Court-Martial (SPCM), where you pleaded guilty to violations of the Uniform Code of Military Justice (UCMJ) that included three specifications of UA under Article 86 and one specification under Article 92 for willfully disobeying a lawful command from an officer, issued on 23 June 1999, to receive the anthrax vaccine. Your

adjudged sentence included a Bad Conduct Discharge (BCD). Therefore, the findings and sentence of your SPCM were subject to appellate review, which was completed on 20 December 2001 with a finding of no prejudicial error. Accordingly, your BCD was ordered executed, and you were discharged, on 21 March 2002, with a total of 238 days of lost time due to your UA periods.

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 to "Honorable" and change your narrative reason for separation to "Secretarial Authority." You contend that your absence without leave was motivated by fear that you would be required to take the experimental anthrax vaccine even after informing your command of your refusal. You provided cases that you believe are similar to the circumstances of your discharge and for which the Board has previously granted relief on the basis that the discharge was too harsh or the member merited clemency for post-discharge character and accomplishments. Additionally, you noted that the policy which mandated the anthrax vaccine was subsequently change to permit refusal while it remained in the experimental phase, which you believe renders your discharge unjust on the basis that it was impacted by the timing of this policy change. For purposes of clemency and equity consideration, the Board noted you submitted your graduation certificates and your public service employment records.

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 SPCM, 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. Although your official military personnel file contains information regarding the charges and results from your SPCM, there is no verbatim record of trial or available evidence that would provide amplifying information in support of your contention that your absence resulted from fear that you might be forced to accept the anthrax vaccine. Rather, the available evidence would contradict such a conclusion, as the order you were convicted of disobeying was issued on 23 June 1999. In fact, two of your UA periods predated this order, and nearly two months transpired between the date of the order and the date of your third period of UA. Thus, the Board was not persuaded by your contentions regarding the vaccine and the causative effect it had on your misconduct.

As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an BCD 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 is attached 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

