



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. 0027-24
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 17 June 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 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).

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Marine Corps and commenced active duty on 11 March 1970. On 1 June 1972, you received non-judicial punishment (NJP) for five occurrences of unauthorized absence (UA). On 21 June 1972, you received NJP for disrespect to a superior non-commissioned officer (NCO), by disobeying an order to get ready to go to the field, and for UA. On 28 July 1972, you again received NJP for UA, by failing to report to morning formation.

On 21 May 1973, you submitted a written request for an undesirable discharge in order to avoid trial by General Court-Martial for possession of 36 grams of marijuana, transferring marijuana, and making a threat to an NCO. Prior to submitting this request, you conferred with a qualified

military lawyer, at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. Your request was granted, and your commanding officer was directed to issue you an undesirable discharge. On 14 June 1973, you were so discharged.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 19 June 1974, based on their determination that 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 Memos. These included, but were not limited to, your desire to change your discharge characterization of service to Honorable and your contentions that you feel your undesirable discharge is unjust, you were in the brig for five months on a minor charge without any contact or update on your case, you were then presented a get out of jail option with an undesirable discharge, but as a young service member and without speaking to a lawyer, you felt forgotten about and accepted it without knowing the consequences, while a Marine you were deployed to ██████████ and did the ██████████ where you tried your best to be a good soldier and do your duties, prior to your military time you never got into any trouble, you were unaware of the long term effects of your discharge and how it would affect your life, you have never shared your discharge with anyone, not even your wife, who you were married to for 36 years, you have always been embarrassed of your discharge even though you were a good and proud Marine, since your discharge, you have had no issues with the law, you became a bricklayer right after the service and retired after 38 years, you have lived a good life, raised a family with one kid and two grandkids, and would love to show them your DD214 with an Honorable discharge. Additionally, the Board noted you checked the "Other Mental Health" box on your application but chose not to respond to the 2 January 2024 letter from the Board requesting evidence in support of your claim. For purposes of clemency and equity consideration, the Board considered your statement and the documentation you provided in support of your application.

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 three NJPs and your request to be discharged in lieu of court martial, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved a drug offenses. The Board determined that illegal drug use and distribution by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. The Board noted that marijuana use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. The Board also considered the likely negative impact your repeated misconduct had on the good order and discipline of your command. Additionally, the Board noted that you were given multiple opportunities to address your conduct issues but you continued to commit misconduct, which ultimately led to your request for an undesirable discharge to avoid trial for your offenses.

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/or 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 possible punitive discharge. Further, the Board noted your record clearly shows you were afforded the opportunity to consult with a military lawyer, prior to submitting your request for discharge. Therefore, the Board was not persuaded by your contention that you requested to be discharged without the benefit of legal counsel or awareness of the consequences of your request.

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, 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,

6/28/2024

