



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. 0182-24
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 submitted within the statute of limitations, the Board found it in the interest of justice to review your request. A three-member panel of the Board, sitting in executive session, considered your application on 8 April 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).

You enlisted in the United States Marine Corps and commenced a period of active duty on 13 December 1982. On 26 December 1983, you received non-judicial punishment (NJP) for violating Uniform Code of Military Justice (UCMJ) Article 113, for sleeping while on post as a sentry in a designated hostile fire zone █ and █ for failure to obey an order by not cleaning your weapon as ordered to do. On 8 January 1984, you received your second NJP for violating UCMJ, Article 86, for failure to go to an appointed place of duty, and Article 92, for dereliction of duty by failing to secure ammunition prior to leaving your position. You were formally counseled due to this misconduct and put on notice that any further misconduct could result in judicial action or administrative discharge processing. On 12 January 1984, you received your third NJP for violating UCMJ Article 113, for leaving his sentry post while in a hostile fire zone without being properly relieved and for sleeping while on post as a sentry in a designated

hostile fire zone, and Article 134, for communicating a threat to a fellow Marine. You did not appeal your NJPs.

On 12 January 1984, you were notified that you were being processed for an administrative discharge by reason of misconduct due to pattern of misconduct. You waived your right to consult with qualified counsel and your right to present your case at an administrative separation board. Your Commanding Officer recommended your discharge from the service with an Other Than Honorable (OTH) characterization of service, stating that your “continued presence in this command is detrimental and even dangerous. He refuses to even guard his fellow Marines while they sleep.” On 27 February 1984, you were discharged from the Marine Corps due to your misconduct with an OTH characterization of service and assigned an RE- 4 reentry code.

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: (1) your desire to change your discharge characterization and narrative reason for separation, (2) your youth and maturity at the time of your service, and (3) your assertion that your characterization unjustly stigmatizes you nearly 40 years later and no longer serves a purpose. For purposes of clemency and equity consideration, the Board noted that you did not provide advocacy letters or documentation of post-service accomplishments.

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 NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it involved repeated failure to properly stand your sentry post while in a designated hostile fire zone. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command. The Board gave weight to your CO’s assessment that your actions were not only detrimental to the mission, but dangerous to your fellow Marines. A characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a service member. The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board highlighted that your characterization and separation was based on a series of infractions, not a one-time incident, that could have jeopardized the safety of your peers.

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,

4/16/2024

