



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. 0387-24
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 15 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 23 October 1979. Over the course of your service, you were held accountable for multiple disciplinary infractions. On 2 October 1980, you received non-judicial punishment (NJP) for violating Uniform Code of Military Justice (UCMJ) Article 92, for possession of marijuana. On 6 May 1981, you received your second NJP for violating UCMJ, Article 89, for disrespect towards a commissioned officer by saying "I will kill you and your family will also suffer, Article 92, for failure to obey an order by not remaining at a NMC Portsmouth community meeting, and Article 134, for threatening to injure commissioned officer by "tearing out his eyes and tongue." You did not appeal these NJPs.

On 16 October 1981, you were arrested by city of █ for Grand Larceny, Burglary, and Attempted Murder, after slitting your wife's throat. On 28 July 1982, you pleaded guilty to Malicious Wounding and Grand Larceny, and were sentenced to 20 years in prison, with credit for time served. Consequently, you were notified that you were being processed for an administrative discharge by reason of misconduct due to your civilian criminal conviction. You waived your right to consult with qualified counsel and your right to present your case at an administrative separation board. On 26 October 1982, you were discharged from the Marine Corps due to your misconduct and assigned an Other Than Honorable (OTH) characterization of service and 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, (2) your assertion that you were subjected to severe racism during your service, (3) your contention that you are a different person than when you served, and (4) your remorsefulness for your transgressions. For purposes of clemency and equity consideration, the Board noted that you did not provide documentation of your post-service accomplishments aside from your statement.

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 and your civilian criminal conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it involved attempted murder. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command and the discrediting nature of your conviction. The Board determined that such misconduct is contrary to Marine Corps values and policy, renders such Marine unfit for duty, and poses an unnecessary risk to the safety of fellow service members. 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 was based on a series of infractions, not a one-time incident and you were given the opportunity to correct your conduct deficiencies. Finally, 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.

As a result, the Board determined that there was no impropriety or inequity in your discharge and concluded that your misconduct clearly merited your receipt of an OTH characterization of service. 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,

4/23/2024

