



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. 1146-24
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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 25 March 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).

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 9 May 1972. On 26 July 1972, you were notified of pending administrative separation processing with an Under Other Than Honorable conditions (OTH) discharge by reason of procuring a fraudulent enlistment by concealment of a pre-service police record. A National Agency Check and DoD investigation revealed that, during your enlistment process, you did not disclose that you had been incarcerated and convicted of selling marijuana in 1971. You waived your rights to consult counsel or have your case heard by an administrative discharge board (ADB). You elected to submit a statement where you confirmed that you were arrested for selling marijuana and asserted that you were advised by your recruiter not to disclose this information. However, on 8 September 1972, you

commenced a one-hundred-thirty-six-day period of unauthorized absence (UA), during which time the Separation Authority directed your discharge with an OTH characterization of service. You were so discharged on 22 January 1973.

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 change your discharge characterization of service and your contentions that you were falsely arrested, subsequently exonerated with your record expunged, your recruiter was complicit in your fraudulent enlistment, and the State forced you to cover up a false arrest and imprisonment. For purposes of clemency and equity consideration, the Board considered the letter you included in your application that you wrote to President Biden and 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 the investigation that uncovered your pre-service arrest and conviction that you failed to disclose, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your initial misconduct, further compounded by an extended period of UA, and the likely negative impact your conduct had on the good order and discipline of your command. The Board also noted that you provided no evidence, other than your personal statement, to substantiate your contentions.

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,

4/9/2024

