



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

██████████
Docket No. 1156-24

Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 29 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 to 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 3 November 1981. You were issued administrative counseling in May 1982, which advised you that sleeping on post would result in disciplinary action. You were again counseled in July 1982 for your inability to cooperate with your peers during mess duty. Although the record of your first nonjudicial punishment (NJP) is not documented in your official military personnel file (OMPF), it is clear that you were in a restricted status as of 18 August 1982 based on the violations of the Uniform Code of Military Justice (UCMJ) from your second NJP, which included an Article 86 violation for absenting yourself from your appointed place of duty and Article 134 for breaking restriction by getting out of your utility uniform and into physical training gear, leaving the building, and walking around.

You were administratively counseled an additional three times from October through November of 1982 for having contraband in the barracks, your continued substandard performance as Marine, detrimental behavior towards good order and discipline, lack of personal hygiene, inability to make formation [at the time required], and, failure to cooperate with your peers.

On 21 November 1982, you accepted a third NJP for no fewer than nine specifications of UCMJ violations under Article 91 for assault upon a staff sergeant by shoving him on the chest with your hands, assault upon another staff sergeant by striking him in the face with your fist, disrespectful language toward both of the staff sergeants whom you assaulted as well as toward a third staff sergeant, disobeying lawful orders from two staff sergeants to leave the Staff Non-Commissioned Officer quarters, and disobeying a lawful order of a staff sergeant to get a regulation haircut.

Following this seven month stretch of continuous performance and conduct issues, you appear to have served several months from December 1982 through February 1983 without notable incident. However, on 16 March 1983, you were subject to a fourth NJP for another Article 86 violation due to being absent without authority from your appointed place of duty as well as Article 90 for failure to obey a lawful order of a superior commissioned officer to remove your yellow t-shirt and report back within two minutes.

On 28 April 1983, you received a psychological evaluation which diagnosed you as having a “significant Personality Disorder;” however, it noted you were responsible for your behavior and recommended that you be discharged for unsuitability if not otherwise processed for administrative separation for another reason. Subsequently, you were notified of processing for administrative separation by reason of misconduct due to a pattern of misconduct, in reference to your four NJPs. After consulting legal counsel, you elected to request a hearing before an administrative separation board. However, on 5 May 1983, a recommendation for your discharge under Other Than Honorable (OTH) conditions was forwarded. At some point, you decided to waive your right to a hearing, which you subsequently documented in writing with a written statement on 7 June 1983. In your statement, you alleged that, in August 1982, you were held down by other Marines under the orders of a staff sergeant and were forcibly given a haircut, which led to further conflict and your subsequent NJP. This statement was included with the recommendation for your discharge, both of which were subject to legal review prior to final action. Following the conclusion of this legal review, which found the proceedings to be sufficient in law and fact, your separation was approved, and you were discharged on 17 June 1983 with final proficiency and conduct marks below the minimum otherwise normally required for an “Honorable” characterization of service.

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 your contentions that you would like to be eligible to receive veteran benefits. For purposes of clemency and equity consideration, the Board noted you did not provide documentation describing post-service accomplishments or advocacy letters.

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 NJPs and multiple counselings, 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. Further, the Board noted that you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct. 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 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 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,

4/22/2024

