



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. 1184-24
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 22 July 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 2 February 1984. On 7 December 1984, you received non-judicial punishment (NJP) for unauthorized absence (UA). On 22 April 1985, you again received NJP, for disobeying a lawful order by driving a vehicle without a license. Additionally, you were issued an administrative remarks (Page 11) counseling concerning deficiencies in your performance and/or conduct. You were advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge.

You were again issued an administrative remarks (Page 11) counseling on 14 May 1985 concerning deficiencies in your performance and/or conduct. On 24 May 1985, you received a third NJP for an orders violation by consuming alcohol and wearing civilian clothes while restricted.

You were issued another administrative remarks (Page 11) counseling on 22 July 1985 for violating an order by being UA from firewatch. You received a fourth NJP, on 23 January 1986, for UA.

On 18 April 1986, you were convicted at Special Court-Martial (SPCM), of three specifications of Article 86 of the Uniform Code of Military Justice (UCMJ) for failure to go to your appointed place of duty on two occasions, and UA. Your sentence included forfeiture of \$426 pay per month for two months, two months confinement at hard labor, and reduction in paygrade to E1.

Subsequently, you were notified of pending administrative separation processing with an Other Than Honorable (OTH) discharge by reason of misconduct due to pattern of misconduct. You waived your rights in the separation process, including your rights to consult counsel, submit a statement, or have your case heard by an administrative separation board (ADB). The Separation Authority directed your discharge with an OTH characterization of service and you were so discharged on 14 August 1986.

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 served your nation for two years, you need healthcare and housing, you didn't agree with the officers at the time so they believed he was rejecting other soldiers, you did drink a lot in the military because you felt stuck with no way of winning which caused you to act in ways you're not proud of, you did not have an attitude with the officers, he just did not agree with the decisions they made, and he felt depressed and alcohol was the only way he could cope with everything. Additionally, the Board noted you checked the "Other Mental Health" box on your application but chose not to respond to the 7 February 2024 letter from the Board requesting evidence in support of your claim. For purposes of clemency and equity consideration, the Board considered the evidence 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 your NJPs and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the likely negative impact your repeated misconduct had on the good order and discipline of your command. The Board also noted that you were given multiple opportunities to address your conduct issues but you continued to commit misconduct, which ultimately led to your unfavorable separation. 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 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,

8/9/2024

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