



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

██████████
Docket No. 1185-24
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 12 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 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).

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) 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 US Marine Corps Reserve (USMCR) and completed an Honorable period of active duty for training from 21 July 1999 to 18 December 1999. You were released from active duty and transferred to the USMCR upon completion of your required active service.

Between 5 August 2000 and 23 May 2001, you were notified on three occasions of your failure to attend inactive duty training (IDT). Notification was sent via certified mail from your commanding officer to inform you of your 18 missed IDTs. Subsequently, you were sent notification via certified mail of a competency review board (CRB) on 21 June 2001.

Due to your continued failure to attend IDT you were reduced in rank on 26 August 2001. In addition, on 4 November 2001, you received non-judicial punishment (NJP) for possession of marijuana. You punished with reduction in rank and forfeiture of pay (suspended). In a written statement, you admitted to being in possession of marijuana and explained that you have attempted to make up for missed drills. On 2 December 2001, you were counseled regarding your illegal drug use identified through urinalysis. As a result of the foregoing, you were notified of the initiation of administrative separation proceedings and you declined to sign acknowledgment of the discharge action. In the meantime, your command continued to attempt to contact you regarding your continued failure to participate in IDT. On 27 September 2002, your commanding officer recommended your separation due to your failure to attend scheduled drills and your drug abuse. Your separation proceedings were determined to be sufficient in law and fact. Subsequently, the separation authority approved and directed your separation with an Other Than Honorable (OTH) character of service by reason of misconduct due to drug abuse. You were so discharged on 12 July 2004.

You previously applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request, on 2 February 2005, after concluding your discharge was proper as issued.

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 character of service to Honorable and contentions that you were punished twice for the same offense, you were never counseled when you were originally demoted, other Marines were not discharged for the same offense, and you have changed since your discharge. 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 NJP, counselings, and multiple UAs from required training, 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 you were sufficiently notified of your unsatisfactory participation, and the consequences of continued misconduct. The Board determined your discharge was consistent with the substantive requirements for discharge and your reductions in rank were not unduly harsh, disproportionate to the offenses you committed, or double punishment. Finally, the Board also noted you provided no evidence, other than your 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. 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,

5/1/2024

