



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. 1619-24
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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 1 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, 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 Marine Corps and began a period of active duty on 4 November 1980. Between 28 July 1981 to 22 September 1983, you received nonjudicial punishment (NJP) on four occasions for sleeping while on duty, two instances of unauthorized absence (UA) from appointed place of duty, disobeying a lawful order from a commissioned officer, and disrespect towards a commissioned officer. On 28 September 1983, you were counseled concerning your placement on the anti-abuse program, which was the direct result of excessive alcohol consumption. You were advised that failure to take corrective action could result in administrative separation.

On 6 January 1984, you were convicted by summary court martial (SCM) for assault on another Marine by striking him in the face with a closed fist. You were found guilty and sentenced to reduction to the inferior grade of E-1, forfeiture of pay, restriction for a period of 45 days, and extra duty for a period of 45 days without suspension. On 24 February 1984, you were convicted by another SCM for disrespect towards a commissioned officer, willfully disobeying a lawful order, consumption of alcohol in an unauthorized area, assault on another Marine by striking him in the face with closed fist, drunk and disorderly conduct, and communicating a threat to injure a fellow Marine. You were found guilty and sentenced to reduction to the inferior grade of E-1, confinement at hard labor for a period of 30 days, and forfeiture of pay in the amount of \$200.00 for a period of one month. Consequently, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to pattern of misconduct, at which point, you decided to waive your procedural rights. Your commanding officer recommended and Other Than Honorable (OTH) discharge characterization and your administrative separation proceedings were determined to be sufficient in law and fact. The separation authority approved and ordered an OTH discharge characterization by reason of misconduct due to pattern of misconduct. On 9 April 1984, you were so discharged.

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 for a discharge upgrade and contentions that you were not allowed to deploy to Beirut and decided to begin drinking alcohol, were involved in altercations which never amounted to felonies, were out of control during that period of time but never once wanted not to be in the military, were young and got caught up in drinking, you became discouraged after you were denied a deployment to Beirut, and you need veterans' benefits. For purposes of clemency and equity consideration, the Board noted you provided copies of a Department of Veterans Affairs (VA) Decision Document, VA Statement in Support of Claim, seven character letters, Promotion Letter, Letter of Commendation, DD Form 214, and other OMPF documents.

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 and SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact it had on the good order and discipline of your unit. The Board noted that you were given multiple opportunities to correct your conduct deficiencies but continued 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. While the Board carefully considered the evidence you submitted in mitigation and commends you for your post discharge good character, 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 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 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,

4/16/2024

