



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. 1750-24
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 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 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 a period of active duty on 5 July 1973. Between 4 December 1973 to 6 June 1974 you received non-judicial punishment (NJP) on six occasions for assault, three specifications of unauthorized absence, failure to obey a lawful order, willful disobedience in the performance of your duties, four specifications of sleeping on post, and willful disobedience of a Superior Non-Commissioned Officer (NCO). On 12 July 1974, you were convicted at a summary court martial (SCM) for willfully disobeying a lawful order, and three specifications of failure to obey a lawful order. Subsequently, you were counseled on two occasions regarding your frequent involvement with military authorities.

Between 28 October 1974 to 20 February 1975 you received NJP on five occasions for four specifications of UA, two specifications of wrongfully disobeying an order, and two specifications of disrespect toward a Superior NCO. Consequently, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to frequent involvement with military authorities. You waived your right to consult with counsel, and your right for a hearing of your case before an administrative discharge board. Your commanding officer recommended your separation from the Marine Corps with an undesirable character of service. In the meantime, you began a period of UA on 13 March 1975. The separation authority concurred with your commanding officer's recommendation and, upon your return from UA, you were discharged on 4 April 1975 with an Other Than Honorable (OTH) character of service.

You previously applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request, on 9 June 1982, 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 characterization of service. You contend you were forced into discharge. Additionally, the Board noted you checked the "PTSD" and "Other Mental Health" boxes on your application but chose not to submit any supporting evidence of your claims. 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 SCM, 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 given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct; which ultimately led to your OTH discharge. Finally, the Board noted you provided no evidence, other than your statement, to substantiate your contention that you were deprived of due process. Therefore, the Board was not persuaded with your argument.

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,

7/31/2024

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