



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. 2825-24
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 30 September 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 24 August 1954. On 30 November 1955, you were subject to nonjudicial punishment (NJP), for a violation of the Uniform Code of Military Justice (UCMJ) after causing a vehicle accident by following too closely. As a result, your Marine Corps driver's license was revoked, you were required to attend driving school, and you served two weeks of extra duties. On 20 January 1956, you were convicted by Summary Court-Martial (SCM) for a violation under Article 86 due to being absent without authority from 14 to 16 January 1956, for which you were punished with 20 days of confinement and a forfeiture of \$55 pay. On 5 March 1956, you received a second NJP for another violation of Article 86 due to being absent from your appointed place of duty at the parade field, which resulted in 10 hours of extra duty. On 22 March 1956, you were tried and convicted by Special Court-Martial (SPCM) for a single specification under Article 86 for leaving your post, as a sentinel, before being regularly relieved. In addition to four months of

confinement with concurrent forfeitures of pay, your sentence included a Bad Conduct Discharge (BCD). The convening authority initially suspended two months of your period of confinement and, on 13 July 1956, vacated the suspension of the confinement; however, the remainder of the unexecuted sentence, including the punitive discharge, was remitted on 12 August 1956, and you were afforded the opportunity to continue serving.

On 10 August 1956, you were subject to a third NJP for a violation under Article 92 due to straggling to evening chow, which resulted in two weeks of restriction. You then received a fourth NJP, on 22 August 1956, for another violation under Article 92 due to failing to muster for restriction, which resulted in an additional 10 days of restriction. On 31 October 1956, you were again convicted by SPCM for violation of Article 113, for again leaving your post as sentinel before being regularly relieved and for violation of Article 91 by disobeying the lawful order of a superior noncommissioned officer to go to work and then to report back at a specified time. You were sentenced to six months of confinement at hard labor with forfeitures of pay and again adjudged to receive a BCD. The findings and sentence of your second SPCM were affirmed, following legal review, on 19 February 1957. Although you requested clemency in the form of restoration, your request was denied, and your BCD was executed on 6 May 1957.

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 and to change your narrative reason for separation to "Secretarial Authority." You contend that you struggled with adapting to military service due to your childhood experiences of being raised in an orphanage and then experiencing homelessness prior to your entry into the Marine Corps. Additionally, you state that you retained custody of your four children following your divorce, post-discharge, and raised them while working full time in addition to volunteering with your local community theater, assisting backstage, and receiving awards in recognition of your assistance. Currently, now that you are in your late 80s, you suffer from critical illness which requires daily care-taking with the assistance of your family. For purposes of clemency and equity consideration, you submitted a personal statement, evidence of your membership as a sheet metal union worker for over 60 years, photos of the volunteer awards you received, your American Legion card, and your health records.

After thorough review, the Board concluded the potentially mitigating factors you submitted for consideration were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs, SCM, and SPCMs, 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. In addition, the Board observed that you were given multiple opportunities to correct your conduct deficiencies and chose to continue to commit misconduct. Finally, the Board determined you already received a large measure of clemency when the Marine Corps remitted your first punitive discharge.

As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant a BCD. While the Board carefully considered the evidence you submitted in mitigation and commends you on your post-discharge accomplishments, 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 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,

10/28/2024

