



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. 3037-24
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 22 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).

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 15 May 1986. On 17 February 1987, you received non-judicial punishment (NJP) for unauthorized absence (UA) and disobeying a lawful order. On 14 April 1988, you received NJP for a three-day period of UA. Additionally, you were issued an administrative remarks (Page 13) 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.

On 13 December 1988, you received NJP for a twenty-two-day period of UA. On 25 January 1989, you were found guilty at Summary Court Martial (SCM) of three specifications of UA by breaking restriction.

Consequently, you were notified of pending administrative separation processing with an Under Other Than Honorable conditions (OTH) discharge by reason of misconduct due to pattern of misconduct. You elected to consult with legal counsel and subsequently requested an administrative discharge board (ADB). The ADB found that you had committed misconduct and recommended that you be discharged under OTH conditions by reason of misconduct due to pattern of misconduct. The separation authority approved the ADB recommendation, and on 7 July 1989, 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 to change your discharge characterization of service and your contentions that your discharge reason should not have been a pattern of misconduct because you were dealing with a Child Protective Services (CPS) investigation shortly after your daughter was born, loss of custody of your children, and you did not receive assistance from your chain of command and were sometimes delayed from attending legal proceedings. You argue that your legal situation required you to choose between your family and the Marine Corps, and you chose your family. You further contend that, post-discharge, you have remarried, opened several businesses, become an ordained minister, held a seat on an executive board, and are currently employed by ■■■■■ county. For purposes of clemency and equity consideration, the Board considered your statement and the documents you provided, including service/medical record documents, a credential of ministry, performance appraisals, professional certificates, a professional award, and positive customer feedback forms.

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 SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact your repeated misconduct had on the good order and discipline of your command. The Board noted that your service record indicates you committed misconduct and received one NJP prior to the CPS investigation that you contend contributed to your misconduct. The Board further noted that you were given multiple opportunities to address your conduct issues and your command provided you assistance, allowed you time off, and suspended imposed penalties to facilitate your participation in your legal obligations and parenting classes; however, you continued to commit further misconduct, which ultimately led to your separation for a pattern of misconduct. The Board noted that you provided no evidence to support your contentions that you were not supported by your command or that you were prevented from attending to your legal obligations.

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 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 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,

5/14/2024

