



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. 3625-24
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 24 June 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 8 March 1982. On 2 January 1985, you began a period of unauthorized absence (UA) which lasted two-days. On 30 January 1985, you received nonjudicial punishment (NJP) for four instances of UA from appointed place of duty and sleeping on post. On 8 March 1985, you were counseled concerning constant tardiness and failure to utilize proper procedures for signing in or off of liberty. You were advised that failure to take corrective action could result in administrative separation. On 23 April 1985, you were counseled concerning your inability to budget your time properly during liberty resulting in frequent tardiness. On 15 April 1985, you began a period of UA which lasted

two-days. On 3 May 1985, you began a period of UA which lasted three-days and resulted in your second NJP on 9 May 1985. On 14 May 1985, you were counseled deficiencies resulting in NJP. You were advised that failure to take corrective action could result in administrative separation. On 31 May 1985, you began a period of UA which lasted 35 days. On 18 July 1985, you were convicted by summary court martial (SCM) for four instances of UA and sentenced to reduction to the inferior grade of E-1 and confinement at hard labor for a period of 30 days. Consequently, you were counseled concerning deficiencies leading to NJP and SCM. You were advised that failure to take corrective actions could result in administrative separation. On 24 July 1985, your SCM sentence was affirmed.

On 17 August 1985, you began a period of UA which lasted four days and resulted in your conviction by SCM and sentence of confinement and forfeiture of pay. On 20 September 1985, you began a period of UA which lasted 28 days and resulted in your conviction by special court martial (SPCM). You were sentenced to confinement and forfeiture of pay.

Between 20 December 1985 to 14 January 1986, you had three periods of UA totaling 16 days. Consequently, you requested an Other Than Honorable (OTH) discharge characterization of service in lieu of trial by court martial. The separation authority approved your request, and on 10 March 1986, 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 contention that you requested a change of duty station to be close to your ill grandmother. For purposes of clemency and equity consideration, the Board noted you did not provide supporting 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, SCMs, SPCM, and request to be discharged in lieu of trial by court martial, 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 also noted that the misconduct that led to your request to be discharged in lieu of trial by court-martial was substantial and, more likely than not, would have resulted in a punitive discharge and extensive punishment at a court-martial. Therefore, the Board determined that you already received a large measure of clemency when the convening authority agreed to administratively separate you in lieu of trial by court-martial; thereby sparing you the stigma of a court-martial conviction and likely punitive discharge. Additionally, the Board considered that you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct. Finally, the Board noted you provided no evidence, other than your personal 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 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,

7/9/2024

