



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. 4813-24
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 May 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).

You entered active duty with the Marine Corps on 11 June 1981. On 18 December 1981, you received non-judicial punishment (NJP) for having alcohol in the barracks. On 9 November 1983, you were formerly counseled on being in an unauthorized absence (UA) status and disobeying a lawful order. On 2 December 1983, you received NJP for absence from appointed place of duty and willfully disobeying a lawful order. On 6 April 1984, you were formerly counseled on developing a pattern of misconduct. On 7 April 1984, you received NJP for disrespectful in language toward a non-commissioned officer. On 9 August 1984, you received NJP for wrongful use of marijuana. Consequently, you were notified of pending administrative separation action by reason of misconduct due to a pattern of misconduct. You elected to consult with legal counsel and requested an administrative discharge board (ADB). The ADB found that you committed misconduct and recommended you receive an Other Than Honorable (OTH) characterization of service. The separation authority concurred with the ADB and directed an OTH discharge by reason of misconduct due to a pattern of misconduct. On 10 October 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 to upgrade your discharge and contentions that you received documents from the Department of Veteran Affairs (VA) stating you have a Dishonorable discharge, you were a young kid that experienced death, suicide, and mistreatment of Marines, 30 years has passed since your discharge, you served three and a half years on a four-year enlistment, you earned a Good Conduct medal, and you need VA assistance. 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, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved a drug offense. The Board determined that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. Further, 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. The Board also noted that VA eligibility determinations for health care, disability compensation, and other VA-administered benefits are for internal VA purposes only. Such VA eligibility determinations, disability ratings, and/or discharge classifications are not binding on the Department of the Navy and have no bearing on previous active duty service discharge characterizations. As discussed above, you were assigned an OTH discharge characterization and the Board found no evidence that it was later changed to a dishonorable discharge. Finally, the Board also noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows a discharge to be automatically upgraded after a specified number of months or years.

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,

6/14/2024

