



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. 4932-24
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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 17 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 this 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 enlisted in the Marine Corps and commenced active duty on 31 May 1988. On 4 November 1988, you began a period of unauthorized absence (UA) ended by your surrender on 19 November 1988. You then received non-judicial punishment (NJP), on 21 November 1988, for this period of UA.

You commenced another period of UA on 28 February 1989 that lasted until 10 March 1989. Upon your return, you received a psychological evaluation after being seen at medical for attempted suicide and depression. The doctor conducting the psychological evaluation found you suffered from no major depressive order or desire or intent to harm yourself, and concluded you were not mentally ill, and were responsible for your actions. You were diagnosed with Adjustment Disorder with Depressed Mood, marital discord, and Personality Disorder.

On 23 March 1989, you received NJP for UA from 28 February 1989 to 10 March 1989.

Additionally, you were issued an administrative remarks (Page 11) counseling concerning deficiencies in your performance and/or conduct, including frequent involvement with military authorities, indebtedness, overextension of credit, and UA. 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 5 June 1989, you began a third period of UA that ended by your surrender on 7 June 1989. You received NJP for this period of UA on 12 June 1989.

You commenced a fourth period of UA on 27 November 1989 that ended by your surrender on 30 November 1989. You received NJP for this period of UA on 20 December 1989.

On 5 April 1990, you pleaded guilty at Special Court-Martial (SPCM) for four specification of UA, (failure to go to your appointed place of duty), under Article 86 of the Uniform Code of Military Justice (UCMJ), and violation of Article 121 of the UCMJ, for wrongful appropriation of ammunition, (20 live 5.56 mm ball rounds, and 1 blank), of a value of less than \$100, the property of the U.S. government. You were sentenced to a Bad Conduct Discharge (BCD), 45 days of confinement, forfeiture of \$492 per month for two months, and reduction in paygrade to E1.

Also on 5 April 1990, you waived both appellate and Naval Clemency and Parole Board of review your case. Subsequently, on 20 June 1990, the findings and sentence of your case were approved, with the exception of confinement exceeding 14 days. You were ultimately discharged, on 26 October 1990, with a BCD.

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 contentions that your characterization of service was too severe/unjust for your offense, your leadership failed to act on a previous referral for a hardship discharge, you were injured while training at ██████████ following return from ██████████ you discovered your wife committing adultery with a fellow Marine (which resulted in pregnancy and the birth of a daughter), you attempted suicide and were placed in the psychiatric ward at ██████████, you were assaulted twice at ██████████, once by an NCO who grabbed you by the neck, and a second time by a Marine who choked you out, to the point of loss of consciousness, and you do not believe you had proper legal representation in relation to your court-martial. Additionally, the Board noted you checked the "PTSD" box on your application but provided no evidence in support of your claim. 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 your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by four NJPs and a SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact your repeated UA's had on the good order and discipline of your command. Finally, the Board noted that you

were given multiple opportunities to address your conduct issues but you continued to commit misconduct, which ultimately led to your unfavorable discharge.

The Board believed that considerable clemency was extended to you when your 45 day court-martial sentence was reduced to confinement not exceeding 14 days. Regarding your contentions of injury during training and assaults by fellow service members, the Board found no evidence in your record that these events occurred. Likewise, the Board found no evidence of insufficient legal counsel provided to you in your court-martial process. The Board noted you provided no evidence, other than your personal statement, to substantiate your contentions. Lastly, regarding your contention related to your suicide attempt and depression, as addressed above, your mental health was appropriately evaluated following your return from UA in March 1989, and you were found not to be mentally ill.

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. 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,

7/10/2024

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