



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

█
Docket No. 5128-24
Ref: Signature Date

█
█
█

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 19 July 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 a period of active duty on 27 June 1979. Between 5 November 1980 to 16 July 1981, you received non-judicial punishment (NJP) on five occasions for eight specifications of unauthorized absence (UA), disobedience of a lawful order, and breaking restriction. During the aforementioned period you were also counseled on three occasions regarding your misconduct, and you were notified further deficiencies in your behavior could result in the initiation of administrative separation proceedings. On 8 September 1981, you were convicted at a summary court martial (SCM) for two specifications of UA. Consequently, you were notified of the initiation of administrative separation proceedings by reason of

misconduct due to frequent involvement with military authorities. You waived your right to consult with counsel and a hearing of your case before an administrative discharge board. The separation authority approved and directed your separation with an Other Than Honorable (OTH) character of service by reason of misconduct due to frequent involvement with military authorities. On 23 December 1981, 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 characterization of service and contentions that you were denied due process during your administrative separation processing; specifically, that you were forced to sign your discharge documents without explanation despite being six months away from your discharge. For purposes of clemency and equity consideration, the Board noted you provided documentation describing post-service accomplishments.

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 and SCM, 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. Further, the Board was not persuaded by your arguments of denial of due process. First, the Board determined there is a presumption of administrative regularity in the conduct of governmental affairs. This presumption can be applied to any review unless there is substantial credible evidence to rebut the presumption. Second, the Board noted you provided no evidence, other than your statement, to substantiate your contention regarding denial of due process. Therefore, in the absence of substantial evidence to the contrary, the Board was satisfied that you were afforded all required due process as part of your separation and were properly separated based on your record of misconduct.

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,

8/7/2024

