



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. 5254-24
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 10 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).

You entered active duty with the Marine Corps on 28 January 1977. On 26 May 1977, you received non-judicial punishment (NJP) for absence from appointed place of duty. On 2 November 1977 and 13 December 1977, you were formerly counseled on your conduct while in an off duty status and your marginal duty performance. On 30 March 1978, you received NJP for disrespectful in language toward a commissioned officer. On 3 May 1978, civil authorities convicted you of burglary. You were sentenced to three years confinement, which was suspended. On 21 December 1978, you received NJP for failure to go at time prescribed to appointed place of duty. On 9 January 1979, you received NJP for possession of alcohol in the barracks. On 19 January 1979 and 22 January 1979, you were formerly counseled on your failure to sign in while on restriction and your frequent involvement with military authorities. On 24 January 1979, you received NJP for six specifications of failure to go at time prescribed to appointed place of duty. Consequently, you were notified of pending administrative separation action by reason of misconduct due to frequent involvement with military authorities. 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

a General (Under Honorable Conditions) (GEN) characterization of service. However, on 11 May 1979, you received an additional NJP for disobeying a lawful order and disrespectful in language to a noncommissioned officer. On 17 May 1979, the separation authority concurred with the ADB and directed a GEN discharge by reason of misconduct due to frequent involvement. On 18 May 1979, 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 your discharge occurred over 40 years ago and you were young and immature. 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 and civil conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact your conduct had on the good order and discipline of your command. Further, the Board also noted that the evidence of record did not show that you were not responsible for your conduct or that you should not be held accountable for your actions. Additionally, the Board noted you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct. The Board further considered that you were already provided a large measure of clemency when your command chose not to pursue an Other Than Honorable characterization of service based on your multiple incidents of misconduct during a period of service lasting approximately two years.

As a result, the Board concluded significant negative aspects of your service outweigh the positive aspects and continues to warrant a GEN 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 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,

7/29/2024

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