



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

██████████
Docket No. 5355-24
Ref: Signature Date

████████████████████
██
████████████████████

Dear ██████████

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 30 August 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 to 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 the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Marine Corps and began a period of active duty on 22 June 1981. On 10 December 1981, you were subject to nonjudicial punishment (NJP) for violations of the Uniform Code of Military Justice (UCMJ) under Article 108, due to breaking the hasp of a wall locker which was military property, and Article 107, after making a false statement with intent to deceive that your wall locker had been broken into and that your property had been stolen. On 21 January 1983, you received your second NJP for your violation of Article 86 of the UCMJ for being absent without authority from 0731 until 1315 on 27 December 1982. This absence began a string of misconduct, spanning a relatively brief period of less than a year from April 1983 through March 1984, but resulted in three administrative counseling entries as well as an additional four NJP actions. The first counseling was for uttering false statements with the intent to deceive and absenting yourself without authority from your previous unit, the second was for

losing your military identification card, and the third, issued after your fifth NJP, advised you to correct your frequent misconduct, lack of discipline, lack of attention to duty, and failure to maintain standards. Your third and fifth NJPs were both for violations of Article 113 due to sleeping on post, your fourth NJP was for a 20-minute period of UA, and your sixth NJP was for violating Article 92 by possessing alcoholic beverages prohibited by lawful order.

Consequently, you were notified of administrative separation proceedings for the reason of misconduct due to minor disciplinary infractions. You initially elected to exercise your right to request a hearing before an administrative separation board but later waived your right. The recommendation for your Other Than Honorable (OTH) separation was subject to legal review prior to final decision, and was approved, as recommended, on 24 April 1984. You were so discharged on 18 May 1984.

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 your contentions that you have issues holding down a job due to short patience and mental health symptoms which you believe you suffer due unspecified things that you saw and/or experienced while serving on active duty. You state that you tried to get medical treatment from the Department of Veterans Affairs (VA) but were denied and request an upgrade of your discharge for that reason. Additionally, you checked the "Other Mental Health" and "TBI" boxes on your application but chose not to respond to the Board's request for supporting evidence of your claims. For purposes of clemency and equity consideration, the Board noted you did not provide 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 found that your conduct showed a complete disregard for military authority and regulations. The Board also considered the likely negative effect your misconduct had on the good order and discipline of your unit. Further, the Board observed that you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct. Finally, 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.

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 is attached 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,

9/20/2024

