



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. 5364-24

Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your father's naval record pursuant to Title 10, United States Code, Section 1552. After careful and conscientious consideration of relevant portions of your father's 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 22 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 father's (SM's) 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).

Service Member (SM) enlisted in the U.S. Marine Corps and commenced a period of active duty on 5 August 1975. On 16 August 1977, SM was found guilty at a special court-martial (SPCM) of four specifications of unauthorized absence (UA) totaling 152 days and was sentenced to confinement at hard labor for three months, forfeiture of \$180.00 pay per month for three months and reduction in rank to E-1. On 12 June 1978, SM received nonjudicial punishment (NJP) for an additional six days of UA. Consequently, SM's commanding officer recommended SM be discharged with an Other Than Honorable (OTH) characterization of service. The separation authority approved the recommendation and, on 1 February 1984, SM was discharged in absentia.

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 SM's discharge and have his honors and

medals added to his DD Form 214. You contend that: (1) SM had a daughter who passed away from SIDS (sudden infant death syndrome), (2) SM was denied leave to go home and grieve with his wife, so he went UA, and (3) SM had PTSD concerns from his service in Vietnam. Additionally, the Board noted you checked the "PTSD" and "Other Mental Health," boxes on your application but chose not to respond to the 20 May 2024 letter from the Board requesting evidence in support of your claims. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

After a thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that SM's misconduct, as evidenced by his SPCM conviction and NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of SM's misconduct and found that SM's conduct showed a complete disregard for military authority and regulations. Additionally, the Board noted SM was provided an opportunity to correct his conduct deficiencies but chose to continue to commit misconduct. Lastly, concerning your request to grant honors or awards to SM, the Board determined that there were no errors or inequity on SM's DD Form 214. As a result, the Board concluded SM's conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH. Even in light of the Wilkie Memo and reviewing the record liberally and 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,

8/12/2024

