



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. 5374-24
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 2 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 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).

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) 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 19 November 1985. Between 15 January 1987 to 24 June 1987, you were counseled on five occasions regarding your misconduct. Between 12 December 1986 and 10 September 1987, you received non-judicial punishment (NJP) on five occasions for three specifications of willfully disobeying an order of a non-commissioned officer, four specifications of unauthorized absence (UA) from your appointed place of duty, and willfully disobeying an order. Consequently, you were notified of the initiation of administrative separation proceedings as a result of misconduct due to a pattern of misconduct. Your commanding officer recommended your discharge from the Marine Corps with an OTH character of service. An administrative discharge board (ADB) convened and recommended your discharge with a General (Under Honorable Conditions) (GEN) character of service. The

separation authority concurred with the ADB's recommendation and directed your discharge due to pattern of misconduct. On 14 January 1988, you were so discharged.

You previously applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request, on 25 March 1996, after determining your discharge was proper as issued.

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 change your narrative reason for separation and reentry code. You contend that the NDRB upgraded your characterization of service but your narrative reason for separation and reentry code were erroneously left unchanged. You further contend that this error has negatively affected your life, you have been an upstanding citizen since your discharge, and you did not commit the misconduct. For purposes of clemency and equity consideration, the Board noted you provided a copy of your certificate of completion of National Tractor Trailer School.

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 your NJPs and counselings, 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 observed you were provided multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct. Finally, the Board noted that you provided no evidence, other than your statement, to substantiate your contention that you did not commit the misconduct that formed the basis for your administrative separation or that your record was changed by the NDRB. Therefore, the Board determined the presumption of regularity applies in your case. The Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. In the end, the Board concluded you were fortunate to receive a GEN characterization of service despite your extensive record of misconduct.

As a result, the Board concluded significant negative aspects of your service outweigh the positive aspects and continues to warrant a GEN characterization. While the Board carefully considered the evidence you submitted in mitigation, 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,

8/23/2024

