



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. 5529-24
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 28 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 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 U.S. Marine Corps and began a period of active duty on 13 March 1973. On 13 July 1973, you received non-judicial punishment (NJP), for assault. You received your second NJP, on 24 September 1973, for sleeping on post. On 2 October 1973, you were separated from Sea Indoctrination training due to your disciplinary infractions. On 1 November 1973, you received your third NJP for four days unauthorized absence (UA) and disobedience of a lawful order. On 28 November 1973, you received your fourth NJP for failure to obey a lawful regulation.

On 28 February 1974, you were convicted by a special court-martial (SPCM) for UA from company formation, disobeying a lawful order, and assault upon a Marine with a broomstick handle. You were sentence to confinement, forfeiture of pay, and a Bad Conduct Discharge

(BCD). While awaiting review of your conviction, you received your fifth NJP, on 21 January 1975, for two specifications of failure to obey a lawful order, disrespect to a noncommissioned officer, and provocative speech of gestures. On 14 April 1975, you received your sixth NJP for two specifications for failure to obey a lawful order and improperly appearing in uniform. After completion all levels of review, you were discharged with a BCD on 7 May 1975.

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 for a discharge upgrade, promotion to lance corporal, and an adjustment in pay reflecting the promotion. You contend that you were not given proper legal advice or representation, you were 16 years old, and you did not know right from wrong. For purposes of clemency and equity consideration, the Board noted you did not provide any advocacy letters or 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 SPCM, 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 concluded that your discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service, which was terminated by your separation with a BCD. The Board observed that you were given multiple opportunities to correct your conduct issued and chose to continue to commit misconduct. Additionally, the Board was not persuaded by your arguments of youth since you were 18 years old at the time of your SPCM conviction. Finally, the Board found no evidence to support a promotion in your case.

As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant a BCD. 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 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,

9/13/2024

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