



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. 5811-24
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 4 September 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 enlisted in the U.S. Marine Corps on 30 May 1978. You neglected to indicate a preservice police record on your enlistment contract for assault. The commanding officer (CO) requested retention to the separation authority (SA) and it was approved on 10 July 1978.

On 10 February 1980, you received non-judicial punishment (NJP) for four days unauthorized absence (UA). On 25 May 1980, you received your second NJP for being absent from your appointed place of duty. Then, on 27 October 1980, you received your third NJP for failure to obey a lawful command. On 20 March 1981, you received your fourth NJP for willful disobedience of an order. You received your fifth NJP, on 13 June 1981, for assault on another Marine. On 11 December 1981, you received your sixth NJP for missing formation movement.

On 16 January 1982, you began a period of unauthorized absence (UA) that lasted until you were apprehended on 3 May 1982. On 24 May 1982, through military counsel, you requested a separation in lieu of trial (SILT) with an Other Than Honorable (OTH) characterization for the

earlier described misconduct. Your SILT request was approved by the SA and you were so discharged on 15 June 1982.

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 and contention that your lieutenant commander typed your DD Form 214, blocks 3, 19, and 20 on your DD Form 214 are incorrect, you were transferred to administration, you were not informed about the outcome of your discharge, and you were told to just sign your separation documents. For purposes of clemency and equity consideration, the Board noted you provided no 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 SILT request, 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. Additionally, the Board also noted that the misconduct that led to your request to be discharged in lieu of trial by court-martial was substantial and, more likely than not, would have resulted in a punitive discharge and/or extensive punishment at a court-martial. Therefore, the Board determined that you already received a large measure of clemency when the convening authority agreed to administratively separate you in lieu of trial by court-martial; thereby sparing you the stigma of a court-martial conviction and possible punitive discharge. Finally, the Board noted you provided no evidence, other than your statement, to substantiate your contentions.

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. 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,

9/16/2024

