



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. 6151-24
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 26 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 naval record, and applicable statutes, regulations, and policies, to include to the Kurta Memo and 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 Marine Corps and began a period of active duty on 24 July 1980. On 11 January 1982, you were subject to nonjudicial punishment (NJP) for a violation of the Uniform Code of Military Justice (UCMJ) under Article 86, due to an unauthorized absence from 4-5 January 1982; however, your punishment was suspended for two months. You received a second NJP, on 3 March 1982, for another UA offense which resulted in you missing an entire day of firing after showing up late to the range. Your restriction punishment was suspended with the only other punishment being a \$145 forfeiture of pay.

You then absented yourself without authority on 10 April 1982 and remained absent for more than three months, until you surrendered to military control on 27 July 1982. This UA offense resulted in your third NJP, with a punishment of 30 days of correctional custody and reduction to the paygrade of E-2; although your forfeitures of pay were again suspended.

In March 1983, when you were subject to a fourth NJP for two additional Article 86 violations due to failure to go to physical training formation at the prescribed time, as well as two

specifications under Article 91 for willfully disobeying orders of superiors to be in the proper uniform for inspection and to wear a proper uniform to physical training. Your punishment included 45 days of extra duty, reduction to the paygrade of E-1, and two months forfeiture of \$286 pay per month.

Subsequently, you incurred multiple periods of UA over most of April 1983, after which you were formally charged for two UA offenses in addition to restriction breaking in violation of Article 134 of the UCMJ. You consulted qualified legal counsel regarding the charges and evidence against you and, after weighing your options, elected to submit a voluntary request separation in lieu of trial (SILT). In your request, you acknowledged that your characterization of service would most likely be under Other Than Honorable (OTH) conditions. Following legal review, this request was approved on 26 May 1983. However, you were then subject to a fifth NJP, on 27 June 1983, for wrongful possession of 10 grams of marijuana and marijuana paraphernalia. Ultimately, you were discharged on 30 June 1983 with an OTH pursuant to your SILT request.

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 your UA was to assist your family after your father was brutally attacked, you performed well after you returned from your UA and were responsible for ensuring that your ship passed an inspection which it had previously failed two years in a row, you have been successful in every professional situation to which you were assigned, you are unsure why you were given an OTH discharge, and you assume that the result was racially motivated and unjust. 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. Additionally, the Board noted that your conduct included a drug offense. The Board determined that illegal drug possession by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. The Board noted that marijuana possession in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. Further, 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. Therefore, the Board was not persuaded by your arguments that your treatment or discharge was racially motivated, that you were unaware of the reason you received an OTH characterization, or that your participation in a command inspection led to a successful outcome.

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,

8/22/2024

