



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

██████████
Docket No. 6624-24
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your husband's naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of his 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 23 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 husband'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).

Your husband enlisted in the Marine Corps and commenced active duty on 25 July 1968. On 14 February 1969, he was issued an administrative remarks (Page 11) counseling concerning deficiencies in his performance and/or conduct related to the standards of conduct expected and possible consequences of further irresponsible action. On 26 March 1969, he was convicted at Summary Court-Martial (SCM) of violation Article 86 of the Uniform Code of Military Justice (UCMJ) for unauthorized absence (UA), and violation of Article 134 of the UCMJ, by breaking restriction. He was sentenced to be confined at hard labor for 30 days, and to forfeit \$73 pay per month for one month.

In 1969, your husband participated in country insurgency operations in the ██████████.

On 22 March 1971, your husband received non-judicial punishment (NJP) for drunk and disorderly conduct. Thereafter, on 23 September 1971, he voluntarily disclosed his use of drugs, including marijuana, LSD, speed, heroin, barbiturates, and cocaine. He was granted an exemption for drug use. However, on 2 November 1971, he commenced a period of UA ended by his apprehension in ██████████, ██████████, on 23 November 1971.

On 26 May 1972, he was convicted, pursuant to his guilty plea, in the Circuit Court of the State of ██████████ for the County of ██████████ of armed robbery. He was sentenced to 2 – 15 years of confinement.

Consequently, he was notified of administrative separation processing by reason of civil conviction. He waived his right to consult with legal counsel but requested an administrative discharge board (ADB). The ADB found that your husband had committed misconduct and recommended that he be discharged under Other Than Honorable (OTH) conditions. The separation authority concurred with the ADB and approved and directed an OTH discharge by reason of misconduct. On 31 January 1973, he was discharged.

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 husband's discharge characterization of service and replace his existing narrative reason and separation code with "Secretarial Authority." You contend that the military's views concerning rehabilitation, and second chances have changed significantly since his discharge, and that these changes, along with his compelling post-discharge record and acceptance of responsibility, warrant the upgraded requested. For purposes of clemency and equity consideration, the Board considered the documentation you provided, including the memorandum in support of your application and your legal brief with exhibits.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your husband's misconduct, as evidenced by his SCM, NJP, and civil conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of his misconduct and the fact that his civil conviction was for robbery. The Board also noted his sentence for 2 – 15 years of confinement, opining that an equivalent conviction, had been tried for this offense at court-martial, would have risked similar confinement in addition to a possible Bad Conduct or Dishonorable Discharge. Further, the Board noted that your husband was absent without leave from his command at the time of his civil arrest, and that his absence was ended not by his voluntary surrender, but by this apprehension by civil law enforcement officers. Additionally, the Board noted that your husband was given opportunities to address his conduct issues, but continued to commit misconduct, which ultimately led to his unfavorable discharge. Finally, the Board considered that your husband already received a large measure of clemency when he was granted an exemption for his extensive drug abuse.

As a result, the Board concluded your husband's conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. While the Board carefully considered the evidence you submitted in mitigation and commends your

husband's post-discharge rehabilitation, 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 husband's misconduct. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

The Board expressed its condolences for your loss and acknowledged your husband's post-discharge good character.

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,

10/15/2024

