



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. 6667-24
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your father's, herein after referred to as service member (SM), naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of SM's 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 5 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 SM'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).

SM enlisted in the U.S. Marine Corps and began a period of active duty on 24 March 1982. During his relatively brief period of active duty, SM was counseled multiple times concerning his misconduct, lack of judgment, integrity, and dependability. Specifically, he was involved in incidents including theft of items from local Holiday Inn, failure to pay debt at the █, █ USO (united service organizations), short periods of UA (unauthorized absence), and possible possession/use of marijuana. Although SM was afforded an opportunity to submit a statement in rebuttal, he chose not to do so.

On 13 January 1983, SM received nonjudicial punishment (NJP) for three specifications of UA. SM received a second NJP, on 11 February 1983, for an additional period of UA. On 8 July 1983, SM was found guilty at a summary court-martial (SCM) of two specifications of UA, disobeying a lawful order, and unlawfully striking a fellow Marine. SM was sentenced to

confinement for 30 days, reduction in rank to E-1, and forfeiture of \$200.00 pay per month for one month. Consequently, SM was notified that he was being recommended for administrative discharge from the Navy by reason of pattern of misconduct (POM). SM waived his procedural right to consult with military counsel and to present his case to an administrative discharge board. The commanding officer forwarded SM's administrative separation package to the separation authority (SA) recommending his administrative discharge from the Marine Corps with an Other Than Honorable (OTH) characterization of service. Ultimately, the SA directed SM's OTH discharge by reason of misconduct due to POM and he was so discharged on 26 August 1983.

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 SM's discharge character of service and contentions that: (1) SM was the victim of racial discrimination and harassment, (2) SM witnessed racism and discrimination of other Marines who were African American, (3) as a result of his mistreatment, SM became involved in an altercation with his Captain that ended in SM's discharge, (4) SM loved his country, and (5) you would like to honor SM by burying him in a military memorial cemetery. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that SM's misconduct, as evidenced by his multiple counseling entries, NJPs, and SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of SM's misconduct and concluded his misconduct showed a complete disregard for military authority and regulations. Additionally, the Board noted SM was provided several opportunities to correct his conduct deficiencies; however, he continued to commit additional misconduct. Furthermore, the Board observed that you provided no evidence, other than SM's statement, to substantiate your contentions that he was mistreated and discharged based on a conflict with a commissioned officer. 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 reviewing your application, the Board determined you provided insufficient evidence to overcome the presumption of regularity in your case. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities.

As a result, the Board concluded SM'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, 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 SM's misconduct. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

It is regretted that the circumstances of your case are such that favorable action cannot be taken at this time. The Board extends its deepest condolences to you and your family for your loss.

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,

9/5/2024

