



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

██████████
Docket No. 6839-24
Ref: Signature Date

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Dear ██████████

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 16 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 Marine Corps and commenced active duty on 10 May 1986. Your official military personnel file (OMPF) indicates that you were convicted at a Summary Court-Martial (SCM), the findings and sentence for which were reviewed and approved by the Staff Judge Advocate in January 1987.

Unfortunately, additional documents pertinent to your SCM, and subsequent administrative separation, are not in your OMPF. Notwithstanding, 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. Based on the information contained on your Certificate of Release or Discharge from Active Duty (DD Form 214), you were separated on 2 March 1987 with an "Under Other Than Honorable Conditions" (OTH) characterization of service, your narrative reason for separation is "Misconduct -Pattern of Misconduct (admin discharge board required but waived)," your reentry

code is “RE-4,” and your separation code is “HKA1,” which corresponds to misconduct – pattern of misconduct, admin discharge board required but waived.

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 contentions that you did not receive the correct DD Form 215, but only the NA Form 13038 Certification of Military Service that was sent to you by the National Archives and Records Administration. You further contend you were mistreated by your NCO’s due to your religious beliefs. You state the mistreatment started when a Lieutenant forced you to drink alcohol after you refused, which led to you getting in trouble with your commanding officer, who promised to make your life miserable. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application, including a copy of your NA Form 13038 indicating you were discharged “Under Honorable Conditions,” a copy of your DD Form 215, a copy of your DD Form 293, and a letter from the Department of Veterans Affairs (VA) informing you that your service was considered “Under Honorable Conditions” for their purposes.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of a court-martial conviction and likely negative impact your conduct had on the good order and discipline of your command. First, even though your NA Form 13038 states you were discharged with a General (Under Honorable Conditions) characterization, the Board determined this is erroneous based on the OTH characterization listed on your DD Form 214. Second, the Board noted that VA eligibility determinations for health care, disability compensation, and other VA-administered benefits are for internal VA purposes only. Such VA eligibility determinations, disability ratings, and/or discharge classifications are not binding on the Department of the Navy (DoN) and have no bearing on previous active duty service discharge characterizations. Therefore, the Board was not persuaded by either of these documents. Finally, the Board noted that you provided no evidence, other than your statement, to substantiate your contention of mistreatment by non-commissioned or commissioned officers.

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. Although the Board carefully considered the evidence you provided 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. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

Despite the Board’s finding that your NA Form 13038 contains an error, the Board made no recommendation to correct it since Board policy prohibits taking corrective action that would harm a Petitioner. Should you desire to have your NA Form 13028 corrected to reflect the OTH characterization assigned upon your discharge, you may reapply to this Board.

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,

9/26/2024

