



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

██████████
Docket No. 7339-24
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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 2 October 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 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 a period of active duty on 28 September 1998. Between 21 January 2000 and 15 February 2002 you received non-judicial punishment (NJP) on four occasions for two specifications of failure to obey lawful order by consuming alcohol under the legal age, wrongful appropriation of another service member's ID card to consume alcohol, drunken reckless operation of a vehicle, and two specifications of unauthorized absence (UA) from your appointed place of duty. On 16 July 2004, you were convicted at a Special Court Martial (SPCM) of UA from 10 April 2002 until your apprehension 11 December 2003. You were sentenced to a Bad Conduct Discharge (BCD), confinement, and forfeiture of pay. After completion of all levels of review, you were so discharged on 26 August 2005.

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 characterization of service and your contentions that were on leave and failed to return due to family circumstances and related mental health issues, you were five months away from completing your enlistment, and successfully completed your enlistment after returning from UA. The Board noted you checked

the “PTSD” and “Other Mental Health” boxes on your application but chose not to respond to the Board’s request for supporting evidence of your claims. For purposes of clemency and equity consideration, the Board noted provided documents that describe post-service accomplishments.

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 SPCM, 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. Further, the Board considered the likely negative effect your misconduct had on the good order and discipline of your command. Additionally, the Board observed you were given multiple opportunities to correct your conduct deficiencies and chose to continue to commit misconduct. Finally, the Board noted you provided no evidence, other than your statement, to substantiate your contentions. Therefore, the Board was not persuaded by 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 a BCD. While the Board carefully considered the evidence you submitted in mitigation and commends you for your post-discharge accomplishments, 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 misconduct. 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,

10/22/2024

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