



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

Docket No. 7591-24
Ref: Signature Date

Dear Petitioner:

This is in reference to your application for correction of your husband's (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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 6 January 2025. 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).

SM enlisted in the Marine Corps and commenced active duty on 24 June 1980. On 15 October 1980, SM received non-judicial punishment (NJP) for unauthorized absence (UA) from his appointed place of duty. On 10 June 1982, SM received NJP for disobeying a lawful order. On 23 November 1982, SM received Page 11 counseling concerning deficiencies in his performance and/or conduct and was advised that any further misconduct, especially if it involved marijuana or the abuse of other drugs, including alcohol, could result in disciplinary action and in processing for administrative discharge. On 14 March 1983, SM received Page 11 counseling for poor performance of duty and alcohol on his breath. SM provided a rebuttal statement on 30 March 1983: "The statement on poor performance is not properly worded. My performance has been up to par. I always obey all lawful orders, and do my job to the best of my ability. The entry gives the impression that these incidents were common occurrences, and they were not."

On 23 June 1983, SM received NJP for two specifications of UA from appointed place of duty and quitting his post without proper relief. On 31 July 1983, SM was convicted of driving while under the influence (DUI) in a civilian court. On 23 August 1983, SM received NJP for UA and willfully disobeying a lawful order from a non-commissioned officer. On 13 September 1983, SM received Page 11 counseling for repeated UA and was advised that further misconduct could result in disciplinary action and in processing for administrative discharge. On 26 September 1983, SM's commanding officer recommended that he be administratively discharged by reason of misconduct due to minor disciplinary infractions. On 29 September 1983, SM received NJP for UA from his appointed place of duty. On 12 January 1984, SM received NJP for UA.

On 14 February 1984, SM submitted a written request for an undesirable discharge in order to avoid trial by court-martial for UA from appointed place of duty and two specifications of willful disobedience of a lawful order from two non-commissioned officers. Prior to submitting this request, SM conferred with a qualified military lawyer at which time he was advised of his rights and warned of the probable adverse consequences of accepting such a discharge. SM's request was granted and his commanding officer was directed to issue him an under Other Than Honorable conditions (OTH) discharge. On 28 March 1984, SM was so discharged.

Post-discharge, SM applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied his request for an upgrade, on 20 January 1987, based on their determination that SM's discharge was proper as issued.

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 change SM's discharge characterization of service and your contentions that SM made one mistake, he was young and immature, anger from his childhood led to drinking and depression, he developed an alcohol and drug habit after enlisting, and he became an addiction counselor and assistant minister at your temple after his discharge. Additionally, the Board noted you checked the "Other Mental Health" box on your application but did not include documentation or evidence of a mental health condition in your email response to the 25 July 2024 letter from the Board requesting evidence in support of your claim. For purposes of clemency and equity consideration, the Board considered your statement, the advocacy letter, VA decision letter, medication list, transcripts, and certificates you provided.

After thorough review, the Board concluded the potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that SM's misconduct, as evidenced by his NJPs and request for separation in lieu of trial by court martial (SILT), outweighed these mitigating factors. In making this finding, the Board considered the seriousness of SM's misconduct and the likely negative impact his repeated misconduct had on the good order and discipline of his command. The Board noted that he was given multiple opportunities to address his conduct issues but he continued to commit misconduct; which led to his request for an undesirable discharge to avoid trial for his offenses. The Board also noted that the misconduct that led to SM's request to be discharged in lieu of trial by court-martial was substantial and determined that he already received a large measure of clemency when the convening authority agreed to administratively separate him in lieu of trial by court-martial; thereby sparing him the stigma of a court-martial conviction and possible punitive discharge. Finally, contrary to your

contention, the Board found that Petitioner's misconduct was not a single mistake but involved a pervasive pattern of misconduct.

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 and commends SM's 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 SM'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.

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,

1/22/2025

