

DEPARTMENT OF THE NAVY

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

> Docket No. 8236-24 Ref: Signature Date

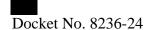


This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the 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 21 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 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, 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 began a period of active duty on 1 April 1982. On 15 February 1983, you began a period of unauthorized absence (UA) which lasted 16 days and resulted in nonjudicial punishment (NJP) on 9 March 1983. On 11 March 1983, you were injured in your right hand as a result of an unintentional discharge of weapon with a blank round in rifle. On 7 September 1983, you began a second period of UA which lasted one day and resulted in your second NJP on 15 September 1983. Between 26 September 1983 and 6 December 1983, you had two periods of UA totaling 68 days.

Upon your return from UA, you requested an Other Than Honorable (OTH) discharge characterization in lieu of trial by court martial. After your administrative separation proceedings were determined to be sufficient in law and fact, the separation authority approved your request. On 23 December 1983, you were so discharged.



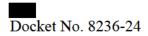
Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for relief. On 27 November 1990, the NDRB denied your request after concluding your discharge was proper as issued.

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 for a discharge upgrade and contentions that: (a) you are requesting an upgrade with the intent to present a claim for a service connected disability, (b) you have basically served a life sentence with an OTH and pray for relief, (c) during your 18 months of service, you were injured on a Westpac and transferred stateside, (d) you were young and felt mistreated, (e) an aggressive WO convinced you in accepting the OTH was the best due to your right hand injury, (f) you were meritoriously promoted two times. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

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 request for discharge in lieu of trial by court martial, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact it had on the good order and discipline of your unit. The Board also noted that the misconduct that led to your request to be discharged in lieu of trial by court-martial was substantial and, more likely than not, would have resulted in a punitive discharge and/or extensive punishment at a court-martial. Therefore, the Board determined that you already received a large measure of clemency when the convening authority agreed to administratively separate you in lieu of trial by court-martial; thereby sparing you the stigma of a court-martial conviction and possible punitive discharge. Additionally, the Board noted you provided no evidence, other than your statement, to substantiate your contentions. Lastly, 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 your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. 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.

You are entitled to have the Board reconsider its decision upon the 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,

