



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

██████████
Docket No. 8299-24
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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 23 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, 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).

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the U.S. Marine Corps and began a period of active duty on 30 December 1968. On 29 January 1969, you received non-judicial punishment (NJP) for assaulting another Marine by striking him with your fists. You received your second NJP, on 23 April 1970, for assaulting another Marine by striking him in the face with your fists and intentionally inflicting grievous bodily harm upon him. You were subsequently issued a counseling warning concerning the fact that your constant disciplinary problem and warned if no improvement is shown you will be recommended for discharge. On 12 May 1970, you received your third NJP for unauthorized

absence (UA), failure to obey a general order, and signing a false official document with the intent to deceive.

Consequently, you were notified of administrative separation processing for convenience of the government (COG) After you waived your rights, the Commanding Officer (CO) made his recommendation to the Separation Authority (SA) that you be discharged with a General (Under Honorable Conditions) (GEN). The SA accepted the recommendation, and you were so discharged on 2 July 1970.

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 to qualify for a tax exemption and contention that at the time you were a young hot head and, after you were shot by friendly fire and nothing was done, you became defiant. For purposes of clemency and equity consideration, the Board noted you provided a Department of Veterans Affairs benefits letter and your DD Form 214.

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, 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 conduct had on the good order and discipline of your unit. Additionally, the Board observed that you were given multiple opportunities to correct your conduct deficiencies and chose to continue to commit misconduct. 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. In the end, the Board concluded that you were fortunate to receive a GEN characterization of service based on your extensive record of misconduct that included two violent offenses against fellow Marines.

As a result, the Board concluded significant negative aspects of your service outweigh the positive aspects and continues to warrant a GEN characterization. While the Board carefully considered the evidence you submitted in mitigation, even in light of 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,

11/8/2024

