




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

 Docket No: 5739-20  
Ref: Signature Date

  
  
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 for Correction of Naval Records, sitting in executive session, considered your application on 2 July 2021. The names and votes of the members of the panel 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).

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to its 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 Marine Corps and began a period of active duty on 13 March 1975. You served honorably through 12 December 1978, when you were discharged and immediately reenlisted, beginning a second period of active duty on 13 December 1978. You completed your second period of enlistment on 17 March 1981, with an honorable discharge. You immediately reenlisted for a third period of active duty on 18 March 1981. During your third enlistment you received two Meritorious Mazts (23 November 1981 and 28 December 1981, respectively). You also received a Sea Service Deployment Ribbon and a Good Conduct Medal. On 11 July 1982, you received nonjudicial punishment (NJP) for violation of Uniform Code of Military Justice,

Article 86 (unauthorized absence (UA)). Your record reflects that you were again absent from your place of duty from 31 March 1983 to 18 May 1983. On 4 November 1983, you appeared before a Special Court Martial (military judge alone) and were found guilty of a period of UA from 25 July 1983 until 12 October 1983. The Special Court Martial sentenced you to a bad conduct discharge, confinement at hard labor for 35 days, forfeiture of \$300 pay per month for 2 months, and reduction in rank to E-1. Your record of trial was forwarded for review; the Department of the Navy, Office of the Judge Advocate General in the U.S. Navy-Marine Corps Court of Military Review examined the record of trial, the assignment of error, and the Government's reply thereto and concluded, that the findings and sentence were correct in law and fact. On 24 July 1984, you were discharged from the Marine Corps with a bad conduct discharge.

In your application to the Board, you request an upgrade to your discharge characterization. You state you were having emotional stress of which the command was aware but did nothing to help. You state that you were under a lot of stress and that you were lied to by your commanding officer. You believe your current discharge was not fair for your offense and was issued in retaliation by your commanding officer. You indicate that you requested an 8-hour extension from your Warrant Officer and that you did not report for duty in part because you were told by the Warrant Officer that he would have you kicked out of the Marine Corps if you could not report by 0730 that Monday. You also assert that you were dealing with personal issues including losing custody of your children. In support of your application, you provide a favorable character letter from your civilian employer during a period you were UA (spring 1983) from the Marine Corps.

Your request was fully and carefully considered by the Board in light of the Secretary of Defense's Memorandum, "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requested by Veterans Claiming Post Traumatic Stress Disorder" of 3 September 2014, and the "Clarifying Guidance to Military Discharge Review Board and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment" memorandum of 25 August 2017. The Board also reviewed your petition in light of the Under Secretary of Defense's memorandum, "Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations" of 25 July 2018.

As part of the review process, a Physician Advisor reviewed your request, and issued an Advisory Opinion dated 9 April 2021. The Advisory Opinion noted that you did not provide any evidence of an in-service or post-service mental health condition, no did you describe any symptoms you were experiencing while in-service. In additional, there is no indication in your service record or petition that you experienced a primary or secondary trauma while in-service. The Advisory Opinion concluded that the preponderance of available objective evidence failed to establish that you were diagnosed with a mental health condition, suffered from a mental health condition at the time of your military service, or that your in-service misconduct could be attributed to a mental health condition. The Advisory Opinion was provided to you, and you submitted a rebuttal in which you state that there is no record of any mental problems because at the time you were in the Marine Corps, there was no one to talk to because if you sought help, it

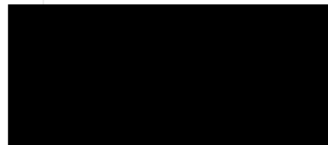
was the start of your end in the Corps. You assert that you would not have gone UA unless there was a reason. You reiterate that you were dealing with personal problems beginning in 1979, that you were told you would have your children taken from you in the early 1980s, and that you sought help from your Commanding Officer who refused to assist you. You also state that you were restrained during your special court martial proceedings, which indicates that your mental state was at issue. You ask that the Board take into consideration that things were not disclosed in the Marine Corps at the time you served, and that Marines were kicked out for many reasons in an effort to reshape the image of the Marine Corps. You also indicate that you have a log-book in which you kept daily records and that your command was afraid of you because you had recorded things they did not want documented. You state "if you can just read my record book and then tell me why I quit if I had no mental problems."

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 contentions that you were suffering from stress and a mental health condition during your third enlistment that mitigated your misconduct of UA and warrants an upgrade to your bad conduct discharge. The Board noted your rebuttal to the Advisory Opinion and acknowledged your statements about the lack of candid disclosure about mental health concerns around the time of your active duty service. Nonetheless, the Board concurred substantially with the determinations of the Advisory Opinion and found that there is insufficient evidence to find that you suffered from a mental health condition at the time of your military service that mitigates the misconduct for which you received a bad conduct discharge. The Board took into consideration your two prior honorable periods of enlistment, but found that your period of UA from 25 July 1983 to 12 October 1983 in your third enlistment was sufficient to support the sentence issued by the special court martial. The Board also noted that you received a post-trial review of the special court martial proceedings and the sentence was found to be sufficient in law and fact. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. 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,

7/9/2021



Executive Director

Signed by:

