

DEPARTMENT OF THE NAVY

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

> Docket No: 47-21 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 threemember panel of the Board, sitting in executive session, considered your application on 17 February 2021. 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).

You enlisted in the Marine Corps on 1 March 1978. During the period from 21 July 1978 to 2 August 1978, you received two non-judicial punishments (NJP) for disrespectful in language toward a non-commission officer (NCO), willfully disobeying a lawful order, and breaking restriction. On 13 December 1978, you received a warning counseling on your substandard performance, poor attitude, immature behavior, and inability to expend energy constructively. On 12 January 1979, you received NJP for being disrespectful in language toward an NCO. On 17 January 1979, you were notified of administrative separation. On 19 January 1979, you were diagnosed with an antisocial personality and as a result, you were recommended for administrative separation. On 27 April 1979, you submitted a written request for discharge for the good of the service (GOS) to avoid trial by court-martial for two specifications of willfully disobeying a lawful order from a nNCO, three specifications of assault on an NCO, two specifications of being disrespectful in language to an NCO, two specifications of resisting

apprehension, and communicating a threat to an NCO. Prior to submitting this request, you conferred with a qualified military lawyer, at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. Your request was granted and your commanding officer (CO) was directed to issue an other than honorable (OTH) discharge for the good of the service. As a result of this action, you were spared the stigma of a court-martial conviction, as well as the potential penalties of such a punitive discharge. On 7 June 1979, you were discharged.

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 discharge and contentions that all your military enlistment paperwork was falsified, you were enlisted into the Marine Corps under age, you failed the ASVAB test twice but were still enlisted, and you were young and uninformed on how the military worked. The Board also noted your contentions that you are currently retired and have benefits through United Auto Workers and would like a military funeral and to have a Veteran's license plate. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your repeated misconduct, as evidenced by your three NJPs, and request for GOS discharge, outweighed these mitigating factors. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

In regard to your contentions that all your military enlistment paperwork was falsified, you were enlisted into the Marine Corps under age, you failed the ASVAB test twice but was still enlisted, and you were young and uninformed on how the military worked. The Board noted that there is no evidence in your record, and you submitted none, to support your contentions. In regard to your contention that you are currently retired and have benefits through United Auto Workers, the Board noted while commendable, your post service conduct does not excuse your conduct while enlisted in the Marine Corps or the basis for your discharge. Regarding your contention that you would like a military funeral and to have a Veteran's license plate, whether or not you are eligible for Veteran's benefits is a matter under the cognizance of the Department of Veteran Affairs (DVA), and you should contact the nearest office of the DVA concerning your right to apply for benefits. If you have been denied benefits, you should appeal that denial under procedures established by the DVA.

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,

	2/24/2021
Executive Director	
Signed by:	