



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

■  
Docket No: 5165-21  
Ref: Signature Date



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 6 October 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).

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 Marine Corps and began a period of active duty on 29 November 1973. On 14 June 1974 and 26 August 1974, you received non-judicial punishment (NJP) for an unauthorized absence (UA) on two separate occasions. On 9 April 1975, you were convicted by special court-martial (SPCM) of an unauthorized absence from 25 October 1974 to 1 March 1975, totaling 127 days. On 1 August 1975 and 23 December 1975, you again received NJP for unauthorized absence on three occasions, totaling four days.

On 31 March 1976, you commenced a period of UA that subsequently concluded upon your return to military authorities on 22 September 1976, totaling 175. On 25 September 1976, you commenced a second period of UA that subsequently concluded upon your return to military authorities on 26 September 1976. On 20 October 1976, you submitted a written request for separation for the good of the service in lieu of trial by court-martial for the foregoing periods of UA. Prior to submitting this request, you conferred with a military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. As part of this discharge request, you admitted your guilt to the foregoing offenses and acknowledged that your characterization of service upon discharge would be other than honorable (OTH). Your request was granted, and on 22 November 1976, you were so separated.

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 character of service. The Board also considered your contentions that: 1) During the discharge process, despite your signature on the pages and forms, your Gunnery Sergeant, who was advocating for you, did not completely explain to you what was going on and the ramifications of your decision. He also told you that your discharge would automatically be upgraded to honorable after six months; 2) you were young, not adequately informed of the repercussions, and did not fully comprehend the ramifications of your situation and subsequent consequences; 3) the Marine Corps had the option of separating you with a character of service type warranted by your military record; and 4) your character of service has impacted your entire life.

The Board noted you did not submit any documentation or advocacy letters in support of your application to be considered for clemency consideration. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by four NJPs, SPCM conviction, and subsequent separation at your request to avoid trial by court-martial for two specifications of UA totaling 175 days, outweighed these mitigating factors. With regard to your contention concerning your administrative discharge process, the record contains documented evidence that you were provided legal counsel in which you were advised of your legal rights and informed of the consequences of receiving an OTH characterization of service discharge. Additionally, be advised there is no provision of law or in Navy regulations that allows for re-characterization of service due solely to the passage of time. 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,

10/22/2021



Executive Director

