



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

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Docket No: 6017-21
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 you did not file your application in a timely manner, the statute of limitation was waived in accordance with the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo). A three-member panel of the Board, sitting in executive session, considered your application on 14 March 2022. 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 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 Kurta Memo, and 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 also considered an advisory opinion (AO) from a qualified mental health professional dated 2 December 2021, which was previously provided to you.

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 from 21 July 1981 to 19 February 1985, resulting in an honorable discharge and you immediately reenlisted on 20 February 1985. On 16 May 1985, you were counseled concerning the reckless operation of a privately owned vehicle (POV). On 01 August 1985, you were again counseled, this time for

passing bad checks. On 20 August 1986, you were issued a counseling/warning retaining you in the Marine Corps but documenting your failure to meet your financial obligations. You were advised that any further disciplinary infractions or continuation of deficient performance may result in disciplinary action and/or in processing for administrative discharge. On 20 February 1987, you were counseled for poor judgment and leadership in allowing your personal affairs to interfere with your duties as a Marine and for mismanagement of your financial obligations. This was followed by three separate and addition counseling entries, the last of which documented spousal abuse and family disputes resulting in frequent involvement with military and civilian authorities. On 30 May 1987, you commenced a period of unauthorized absence (UA) which lasted for 256 days until you were apprehended on 9 February 1988. On 26 February 1988, you requested to be separated in lieu of facing a trail by court-martial. On 21 March 1988, a staff judge advocate's review of your case found the proceedings were sufficient in law and fact. On this date the discharge authority also approved your request to be separated. On 30 April 1988, you were discharged with an other than honorable (OTH) characterization of service by reason of separation in lieu of trial by court-martial.

As part of the Board's review, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO regarding your assertions that you served honorably while in the Marines and have an honorable discharge from your first enlistment. You also contend you have been thinking of submitting this request for many years and ask for leniency. The AO noted there is no evidence of a mental health condition or reported psychological symptoms/behavioral changes indicative of a diagnosable unfitting mental health condition. The AO also determined that you did not provide any information which indicated you suffered from a mental health condition both in-service and/or post-service. The AO opined, based on available evidence, the preponderance of available objective evidence failed to establish you suffered from a mental health condition at the time of your military service or that your in-service misconduct could be mitigated by a mental health condition.

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 your contentions noted above. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined the seriousness of your misconduct outweighed these mitigating factors. The Board concluded that your extended UA of 256 days that ended with your apprehension showed a complete disregard for military authority and regulations. Further, the Board found that you already received a large measure of mitigation from the Marine Corps when they allowed you to be administratively separated in lieu of trial by court-martial where you, more likely than not, would have received a punitive discharge. In making these findings, the Board concurred with the AO. 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,

3/29/2022

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Executive Director

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