



separate specifications of making a false official statement, willful disobedience of a commissioned officer, and malingering. Prior to submitting this voluntary discharge 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. In the text of your request you expressly admitted that you committed the misconduct as charged:

This evidence substantiates my commission of the offenses alleged. I do not believe that further service would be in the best interests of myself or the U.S. Marine Corps since I am guilty of the charges alleged and supported by the evidence...I understand that my separation from the Naval Service, effected by acceptance of this request, will be with a discharge under other than honorable conditions.

As a result of this course of action, you were spared the stigma of a court-martial conviction for your misconduct, as well as the potential sentence of confinement and the negative ramifications of receiving a punitive discharge from a military judge. You also expressly acknowledged and understood that with an other than honorable conditions (OTH) discharge you would be deprived of virtually all rights as a veteran under both federal and state legislation, and you may encounter substantial prejudice in civilian life in situations wherein the type of service rendered in any branch of the Armed Forces or the character of the discharge therein may have a bearing. In the interim, the command Staff Judge Advocate determined that your separation proceedings were legally and factually sufficient. Ultimately, your request was approved and on 30 September 1985 you were separated from the Marine Corps with an OTH discharge and assigned an RE-4 reentry code. In this regard, you were assigned the correct characterization and reentry code based on your factual situation.

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: (a) your character of service was honorable and exemplary, (b) you were under the care of a physician and no serious offenses were ever committed, (c) you wrote to Congress about the death of a fellow service member and to cover it up you were discharged, and (d) you were being charged twice for the same false official statement offense. However, based upon this review, the Board still concluded that given the totality of the circumstances your request does not merit relief.

The Board unequivocally did not believe that your record was otherwise so meritorious to deserve a discharge upgrade or change in your reentry code. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board also determined that your misconduct constituted a significant departure from the conduct expected of a Marine and that the record clearly reflected your misconduct was intentional and willful and indicated you were unfit for further service. Moreover, the Board noted that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions.

Additionally, the Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average in conduct was 3.20. Marine Corps regulations in place at the time of your discharge required a minimum trait average of 4.0 in conduct (proper military behavior), for a fully honorable characterization of service. The Board concluded that your conduct marks during your active duty career were a direct result of your serious misconduct which further justified your OTH characterization of discharge and RE-4 reentry code.

The Board noted that you did not provide any evidence to corroborate you were retaliated against for being a potential whistleblower, and the Board observed that your service records also did not contain any records to substantiate this contention, and/or any of your other contentions. The Board also noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. Moreover, absent a material error or injustice, the Board generally will not summarily upgrade a discharge or change a reentry code solely for the purpose of facilitating VA benefits, or enhancing educational or employment opportunities, including military enlistments. Accordingly, the Board concluded that you received the correct discharge characterization and reentry code based on your overall circumstances and that such characterization and reentry code were in accordance with all Department of the Navy directives and policy at the time of your discharge. The Board carefully considered any matters submitted regarding your post-service conduct and accomplishments, however, even in light of the Wilkie Memo and reviewing the record holistically, the Board still concluded that given the totality of the circumstances 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,

2/11/2022

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Executive Director

Signed by: █