



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: 7614-21
Ref: Signature Date

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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 initial 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 reconsideration application on 18 February 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 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 on 20 June 1974. While still in initial recruit training, on 18 July 1974 you were convicted by a Summary Court-Martial (SCM) for assault when you struck a Sergeant on the chin with the muzzle of an M-16 rifle. You were sentenced to forfeitures of pay and correctional custody (CC). The Convening Authority approved only the forfeitures of pay portion of SCM sentence.

On 25 March 1975 you received non-judicial punishment (NJP) for insubordinate conduct towards a superior non-commissioned officer and two separate specifications of unauthorized absence (UA). On 1 April 1975 you commenced a period of UA that terminated after six days on 7 April 1975 with your surrender to military authorities. On 20 May 1975 you received NJP for UA when you failed to be at your appointed place of duty twice on the same day. You did not appeal your NJP.

On 3 July 1975 your command issued you a "Page 11" counseling warning (Page 11) informing you that you were recommended for an undesirable discharge by reason of unfitness due to frequent involvement with military authorities. You did not submit a Page 11 rebuttal statement.

In the interim, on 16 October 1975 pursuant to your guilty pleas you were convicted at a Special Court-Martial (SPCM) of willful disobedience of a superior commissioned officer, and four separate specifications of UA that totaled forty-eight (48) days. You were sentenced to confinement at hard labor for sixty days and forfeitures of pay. You did not receive a punitive discharge. The Convening Authority approved the SPCM sentence, but suspended the confinement for six months.

On 11 March 1976 you were notified of administrative separation proceedings in accordance with the Marine Corps Expeditious Discharge Program (MCEDP) by reason of your repeated misconduct that included one SCM, two NJPs, and one SPCM. You elected in writing to waive your rights to consult with counsel and submit rebuttal statements on your behalf. You expressly indicated that you did not object to your discharge. On 17 March 1976 you further indicated in writing on a Page 11 entry that you acknowledged your command's separation recommendation and again did not object to being discharged from the Marine Corps. On 30 March 1976 your commanding officer endorsed your discharge with a general (under honorable conditions) (GEN) characterization of service in accordance with the MCEDP. The CO stated in his endorsement:

Private [G]'s service record reflects that he has been a marginal to substandard Marine since 23 September 1974 when he graduated from Recruit Training...A constant blight on this command, Private [G]'s conduct and performance are subject to his own whim. He has disregarded the counseling given to him by his seniors and any further effort expended in this regard would be totally wasted. He has proved by his lack of productive performance that he should be discharged. I feel that further retention will surely lead to either a punitive discharge or an administrative separation of a discreditable nature. It is therefore requested that authority be granted to expeditiously discharge Private [G] with a General Discharge under the subject program.

On 1 April 1976 the Legal Officer for your CO determined that your separation complied with the MCEDP provisions. Ultimately, on 6 April 1976 you were discharged from the Marine Corps with a GEN characterization of service and assigned an RE-3C reentry code.

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: (a) racism and the civil rights movement were present during your active duty service, (b) your discharge should be corrected to honorable for the relationship to racism and the civil rights movement present on active duty as per VA rating decision, and (c) you were treated unjustly due to racism and the civil rights movement. However, given the totality of the circumstances, the Board determined that your request does not merit relief.

First and foremost, the Board noted that you did not provide any convincing evidence to corroborate or substantiate your contentions that you were treated unjustly, the victim of racism, and/or retaliated against due to the civil rights movement. The Board also observed that your service record also did not contain any records to substantiate this contention, and/or any of your other contentions. Merely making a sweeping allegation is not enough to overcome the presumption of regularity to support the official actions of public officers. In the absence of substantial evidence to rebut the presumption, to include evidence submitted by you, the Board presumed you were properly processed for separation and discharged from the Marine Corps.

The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that characterization under GEN or other than honorable (OTH) conditions is generally warranted for misconduct and is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Marine. The Board determined 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 3.40. 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 pattern of serious misconduct which further justified your GEN characterization of discharge and RE-4 reentry code.

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. Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating VA benefits, or enhancing educational or employment opportunities. The Board carefully considered any matters submitted regarding your character, post-service conduct, and personal/professional 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. Accordingly, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your cumulative misconduct clearly merited your receipt of a GEN and no higher.

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,

2/28/2022

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Executive Director

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