



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: 7696-21
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 12 January 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 and began a period of active duty on 1 February 1973. On 14 July 1973, you received non-judicial punishment (NJP) for failure to go to your appointed place of duty, to wit: fire watch. On 13 January 1975, you received your second NJP for an unauthorized absence totaling 31 days. Your record reflects that you submitted a written request for separation for the good of the service in lieu of trial by court-martial for an unauthorized absence for the period from 12 May 1975 to 29 January 1976, totaling 262 days. 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 offense and acknowledged that your characterization of service upon discharge would be other than honorable (OTH). Your request was granted, and on 1 March 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: (a) while you were serving in █ you were not paid for a period of four to five months; and (b) when you were transferred back to █ you did not have clothes or money, Headquarters was gone, all of your stuff was missing, you did not have anything to supply yourself with, you could not get any help, you did not know what to do, so you had to leave. 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 your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your two NJPs and subsequent separation at your request to avoid trial by court-martial, outweighed these mitigating factors. Additionally, the Board did not find an error or injustice that warrants upgrading your characterization of service or granting clemency in the form of an upgraded characterization of service. 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,

1/24/2022

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Executive Director
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