



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: 7710-21
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 19 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).

You enlisted in the Marine Corps and began a period of active duty on 28 March 1973. On 31 July 1973 and 19 April 1974, you received non-judicial punishment (NJP). Your offenses were absence from your appointed place of duty and unauthorized absence totaling 16 days. Your record noted that on 13 June 1974, you were recommended by a medical board for administrative separation due to physical disability. On 30 July 1974, you received your third NJP for two specifications of unauthorized absence totaling 16 days. On 21 February 1975, you were convicted by summary court-martial (SCM) of an unauthorized absence totaling 71 days. On 5 February 1976, 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 20 June 1975 to 2 January 1976, totaling 196 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 April 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, and your contentions that: (a) prior to your entry into the Marine Corps you suffered a severe laceration to your left eye and as a result, you experienced a traumatic cataract that caused a corneal laceration; (b) during basic training, you encountered embarrassing moments, derogatory remarks, and hostile expressions directed to you from your drill instructors for your impracticable behavior and squad team disappointment; (c) you expressed concerns for your vision where you encountered symptoms of “eye fatigue, dizziness, neck/shoulder pains, headaches, sensitivity to the light, as well as double vision, discomfort, and difficulty concentrating;” (d) you explored other options outside of your military command; (e) eventually, the naval hospital medical examination determined that you appeared unfit for continuation of active duty and you were assured of a medical discharge; and (f) the paperwork for your discharge was never substantiated, and as a result, you allowed your frustration, agony, weariness, patience, loneliness, and weakness to superpose your military character through avenues of an unauthorized absence.

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 three NJPs, SCM conviction, 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,

2/3/2022

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Executive Director
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