



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

█  
Docket No: 249-22  
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 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 23 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 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 entered active duty with the Marine Corps on 30 January 1976. During the period from 23 February to 15 October 1976, you received two non-judicial punishments (NJP) for sleeping on post and two specifications of stealing from other Marines. On 12 January 1977, a summary court-martial (SCM) convicted you of larceny of government property. During the period from 27 January to 8 June 1977, you received four NJPs for two specifications of absence from appointed place of duty, wearing an unserviceable and unclean uniform, breaking restriction, failure to obey a lawful order, larceny from another Marine, and dereliction in the performance of duty. During the period from 9 August to 30 December 1977, you received four NJP's for

three specifications of absence from appointed place of duty, wrongfully driving a patrol vehicle in an unsafe manner, damage to government property, and not properly shaving.

Subsequently, you were notified of pending administrative separation action by reason of frequent involvement with civil/military authorities. After you waived your rights, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge by reason of misconduct due to frequent involvement with civil/military authorities with an other than honorable (OTH) characterization of service. However, on 30 January 1978, you received an additional NJP for absence from appointed place of duty. On 17 February 1978, the SA approved the CO's recommendation and on 13 March 1978, you were so discharged.

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, contentions that you were not properly separated from the Marine Corps, never offered legal representation, you did not know you were being discharged, you were targeted and set up, and you never received Uniform Code of Military Justice (UCMJ) "action."

The Board noted the record contains documented evidence, which is contrary to your contentions that you were not properly separated from the Marine Corps, never offered legal counseling, did not know you were being discharged, and never received "action" under the UCMJ. The record clearly shows that on 11 January 1978, you were notified of pending administrative separation action by reason of frequent involvement with civil/military authorities and waived your rights to present your case to an administrative board (ADB). The Board also noted that there is no evidence in your record, and you submitted none, to support your contention of being targeted and set up by other Marines. Lastly, contrary to your contention that you never received UCMJ "action" was determined to demonstrably false since the record clearly shows you received 11 NJPs and was convicted by a SCM prior to being discharged.

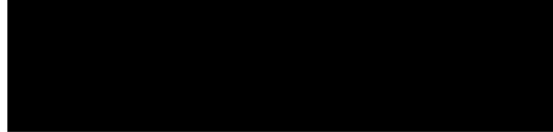
Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your 11 NJPs and SCM conviction, outweighed these mitigating factors. In making this finding, the Board noted that most of your assertions in your application were proven to be false by documentary evidence and that your record of misconduct shows a complete disregard for military authority and regulations. As a result, when weighing the seriousness and frequency of your misconduct against your active duty service, the Board concluded that the preponderance of the evidence supports a finding that your conduct was a significant departure from that expected from a Marine and warrants an Other than Honorable 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,

3/31/2022

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Executive Director

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