



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: 1070-22

Ref: Signature Date

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Dear █:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 28 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, 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 8 July 1975. On 30 March 1977, you began a period of unauthorized absence (UA) which lasted five days. On 26 July 1977, you began a second period of UA which lasted 716 days and resulted in your apprehension by civil authorities. On 17 August 1979, you requested a discharge from service in lieu of trial by court martial. On 23 August 1979, your administrative separation proceedings were determined to be sufficient in law and fact. On the same date, the discharge approval authority approved your request for discharge in lieu of trial by court martial. On 11 September 1979, you were

discharged with an other than honorable (OTH) discharge characterization of service in lieu of trial by court martial.

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 contention that you were wrongfully discharged with an OTH characterization of service due to allegations that you went UA. You contend that you elected to return home after being rejected at your assigned duty station and were a victim of a clerical error by the Marine Corps. You further contend that your counsel advised you to agree with your OTH discharge, which led you to be wrongfully separated from the Marine Corps. Finally, you assert post-discharge good character as additional mitigation evidence. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board concluded that your extended period of UA, which resulted in your request for discharge to avoid trial by court martial, was too serious to be offset by your post-discharge good character. The Board noted you did submit a copy of a transfer worksheet as evidence but found that you were, more likely than not, properly charged with UA based on your failure to report to your new duty station. The Board did not find persuasive your argument that you were erroneously determined to be UA since you returned home after being turned away by the Marine Corps. Finally, the Board noted you were represented by legal counsel when you requested to be separated in lieu of trial by court-martial and personally signed the request admitting you were guilty of UA from 26 July 1977 until 4 August 1979. 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 the 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,

3/21/2022

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Executive Director

Signed by: █