



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: 2912-22

Ref: Signature date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 13 May 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).

You enlisted in the Marine Corps and began a period of active duty on 20 May 1969. On 19 October 1970, you began a period of unauthorized absence (UA) which lasted four-days. On 29 October 1970, you received nonjudicial punishment (NJP) for one period of UA. On 22 February 1971, you began a second period of UA which lasted 57 days. On 21 May 1971, you were convicted by summary court martial (SCM) for a period of UA. You were sentenced to reduction to the rank of E-1 and restriction for 45 days. From a period beginning on 6 July 1971 to 20 September 1971, you began two periods of UA adding to a total of 76 days and resulting in your apprehension by civil authorities. On 21 September 1971, you were apprehended by civil authorities and charged with failure to pay child support and a traffic violation. From a period beginning on 14 November 1971 to 19 December 1973, you began two periods of UA adding to a total of 732 days and resulting in your apprehension by civil authorities. On 4 October 1974, you requested to participate in the Presidential Proclamation Program, at which point, you were found not eligible due to your previous UCMJ offenses. On 2 January 1974, you began an eighth period

of UA which lasted 406 days. Upon surrendering to the Marine Corps Clemency Processing Unit, you were found eligible for Presidential Clemency. On 12 February 1975, your previous UA period from 2 January 1974 was dropped as a result of the amnesty program. On 25 February 1975, you requested a discharge for the good of service due to willful and persistent periods of UA and were discharged under Other Than Honorable (OTH) conditions.

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 for an upgrade to your characterization of service and contentions that you made bad decisions due to your immaturity and alcohol abuse, that you are an old man, and that you have always felt the heavy weight caused by your OTH discharge. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

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 NJP and SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact you were UA during most of your service with the Marine Corps. 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. Finally, the Board considered the fact you already received considerable clemency as a result of your participation in the Presidential Clemency Program. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Marine and continues to warrant an OTH characterization. After applying liberal consideration, the Board did not find evidence of 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 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,

6/9/2022

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Executive Director
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