



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: 3284-22
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 18 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, 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 14 June 2005. On 10 July 2006, you commenced a period of unauthorized absence (UA) which lasted 44 days until you were apprehended. On 31 August 2006, your pre-trial confinement letter documents you were contacted by your First Sergeant (1stSgt) on several occasion urging you to return and you stated your intention not to return to duty. On 26 September 2006, you requested a separation in lieu of trial (SILT) by court-martial for your aforementioned UA. Along with this SILT request you submitted a request for an administrative reduction as part of your SILT. Additionally, on 12 October 2006, you elected your right to consult with military counsel and waived all other

procedural rights. On 24 October 2006, the separation authority approved your SILT request and directed you be discharged with an Other Than Honorable (OTH) characterization of service. On 7 November 2006, 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 and your contentions that, (1) you were coordinating with a 1stSgt to turn yourself in at a specific time and place, (2) upon your arrival at said location no one was there to meet you, (3) you waited until airport security removed you from the premises and decided to go back home to █ as you had no choice but to leave, (4) while in █ you tried to contact the 1stSgt to again arrange to turn yourself over to military authorities to no avail, (5) once your UA was greater than 30 days you were “promptly” arrested by local law enforcement and moved to the █. Finally, you quoted case law language indicating that you were the victim of government entrapment. 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 long-term UA that resulted in your apprehension, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact you expressed, contrary to your assertion, an intention never to return to military duty. Additionally, the Board noted your SILT request and believed considerable clemency was already extended to you when your request was approved. Finally, the Board found no evidence to support your insinuation that you were the victim of entrapment. 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 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,

6/13/2022

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Executive Director

Signed by █