



**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. 3350-22  
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 13 July 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 26 February 1971. During the period from 19 March 1971 to 15 December 1971, you received three instances of non-judicial punishment (NJP). Your offenses were willfully disobeying a lawful order from superior noncommissioned officer (NCO), wrongfully consuming alcoholic beverages in the barracks, assault, and disorderly conduct. On 28 January 1972, you were convicted by a summary court-martial (SCM) of two specifications of failure to go at the time prescribed to your appointed place of duty and one specification of dereliction in the performance of duty. On 28 March 1972, you were again convicted by a SCM of unauthorized absence (UA) totaling 21 days. On 16 May 1972, you entered a period of UA. While you were UA, on 13 October 1972, you were convicted by civilian authorities of impeding a Federal Bureau of Investigation Agent in the performance of his duty and turned over to military authorities. On 9 January 1973, you were convicted by a special court-martial (SPCM) for your period of UA. As punishment, you were sentenced to confinement, forfeiture of pay and a Bad Conduct Discharge (BCD). The BCD was subsequently approved at all levels of review and, on 17 October 1973, 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 character of service and contentions that some of the charges against you were erroneous or unjust and the charges were falsified by your commanding officer in an effort to punish you for requesting mass to see the commanding general of the base. The Board also considered the supplemental evidence you provided with your application. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

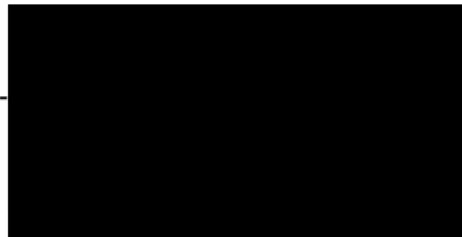
Based upon this review, the Board concluded that your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct as evidenced by your civilian conviction, NJPs, SCM, and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded that it showed a complete disregard of military authority and regulations. The Board further concluded that the discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service, which was terminated by your BCD. The Board noted that you failed to provide any evidence to substantiate your contentions of mistreatment or unlawful conduct by your chain of command.

Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. As a result, the Board determined your conduct constituted a significant departure from that expected of a Marine and continues to warrant a BCD 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 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,

7/28/2022

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