



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: 3378-22
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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 22 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 to 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 23 June 1980. On 29 January 1981, you accepted nonjudicial punishment (NJP) for a violation of Article 86 of the Uniform Code of Military Justice following an unauthorized absence (UA) from 8 – 25 January 1981. After completing your 14-day restriction, you again absented yourself without leave from 17 February – 15 March 1981 for which you accepted trial by Summary Court-Martial (SCM) and served a sentence of 30 days confinement at hard labor. You received a second NJP, on 15 June 1981, following a third period of absence from 1 – 7 June 1981, for which you served on restriction and extra duties. You again absented yourself without leave on 10 August 1981, shortly after completing that period of restriction, and were declared a deserter. You remained absent without leave for 70 days before surrendering to military authorities on 18 October 1981. Your misconduct resulted in a second SCM and additional 30 days of confinement at hard labor. An administrative counseling entry from 15 December 1981 documents that you were notified of processing for administrative separation. Although not all administrative separation records were retained in your personnel file, a final counseling entry dated 6 April 1982 discharge and your DD Form 214 documents that you were separated under Other Than Honorable (OTH) conditions pursuant to the authority of MARCORSEPMAN paragraph 6017.2b for the reason of frequent involvement of a discreditable nature with military authorities, a separation code of JKA1 reflecting discreditable incidents, and a reentry code of RE-4.

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 of mitigating circumstances involving family issues. You argue that you had to deal with your father's illness and assist in helping your twin brother rehabilitate and overcome a heroin addiction. The Board also considered your contention that you would have chosen to have these mitigating circumstances presented before an administrative separation board if you had been offered the opportunity but that you were not able to elect a board because your notification was defective in advising you of your rights and affording you the opportunity to make such an election. 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 NJPs and SCMs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact it had on the good order and discipline of your unit. While the Board took into consideration your family issues at the time, the Board observed that there is no evidence you made any effort to work with your chain command to seek alternative solutions to continuing to go UA. Further, regarding your argument that you were denied due process, the Board noted the counseling records document that you were notified of processing for administrative separation. In addition, the Board considered that your assigned separation code of JKA1 reflects that you waived your hearing before an administrative board. Therefore, the Board relied on the presumption of regularity that you actually waived your hearing before an administrative board. The Board determined you provided insufficient evidence to overcome the presumption and concluded your arguments that the presumption does not apply in your case did not have merit. 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 is attached 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,

8/2/2022

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Deputy Director

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