



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: 3420-22

Ref: Signature date



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 6 June 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).

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) 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 28 November 1973. On 12 December 1974, you received nonjudicial punishment (NJP) for disobeying a lawful order, and being absent from your appointed place of duty. On 23 January 1975, you began a period of unauthorized absence (UA) which lasted eight days, 16 hours, and 54 minutes. On 4 February 1975, you received a second NJP for a period of UA. On 12 February 1975, you received a third NJP for disorderly conduct. On 10 March 1975, you began a second period of UA which lasted four days and 5 hours. On 31 March 1975, you began a third period of UA which lasted four

days. On 1 April 1975, you received a fourth NJP for one period of UA. On 24 April 1975, you began a fifth period of UA which lasted 4 days, 10 hours, and 39 minutes. On 22 May 1975, you received a fifth NJP for two periods of UA. From a period beginning on 15 June 1975 to 29 July 1975, you began four periods of UA totaling 15 days, 23 hours, 29 minutes. On 9 August 1975, you received a sixth NJP for four periods of UA and two instances of failure to obey a lawful order. From a period beginning on 2 September 1975 to 23 September 1975, you began three periods of UA totaling three days, 1 hour, and 29 minutes. On 23 September 1975, you received a seventh NJP for three periods of UA. On 4 November 1975, you received an eighth NJP for a period of UA.

On 13 November 1975, your commanding officer (CO) requested that you were enrolled on a drug dependency program. On 24 November 1975, you were convicted by summary court martial (SCM) for disobeying a lawful order. You were sentenced to forfeiture of pay in the amount of \$50.00 for one month. On 24 January 1976, you began a twelfth period of UA which lasted one day, 20 hours, and 30 minutes. On 28 January 1976, you received a ninth NJP for a period of UA. On the same date, you were notified of the initiation of administrative separation proceedings by reason of unfitness due to frequent involvement, at which point you requested a hearing by an administrative discharge board (ADB). On 29 March 1976, a medical officer recommended a General (Under Honorable Conditions) discharge characterization of service due to satisfactory results during drug treatment. On 26 April 1976, the ADB voted (3) to (0) that you committed misconduct due to frequent involvement. On 27 April 1976, your CO recommended an undesirable discharge characterization of service by reason of frequent involvement. On 24 May 1976, you were discharged with an Other Than Honorable (OTH) characterization of service. On 16 August 2012, this board denied your request for a discharge characterization upgrade.

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 and contentions that you were young and immature, that you made poor decisions and did not understand how bad the consequences would affect your life up until this point, that you have been a good person and lived a good life, and your behavior was attributed to your mother's terminal condition. 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 SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and determined it showed a complete disregard for military authority and regulations. The Board also considered the likely negative impact your conduct had on the good order and discipline of your unit. Finally, the Board found no evidence to support your assertion that your misconduct was attributable to your mother's health condition. 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. Despite commending your assertions of post-discharge good character, 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,

6/29/2022

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Executive Director

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