

DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS 701 S. COURTHOUSE ROAD, SUITE 1001 ARLINGTON, VA 22204-2490

> Docket No: 3498-22 Ref: Signature date



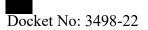
Dear Petitioner:

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 23 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 2 December 1968. On 7 April 1969, you began a period of unauthorized absence (UA) which lasted 19 days and resulted in your apprehension by civil authorities. On 26 April 1969, a traffic accident report concluded that you were driving under the influence of alcohol and drugs. That same day, you were arrested by civil authorities and charged with possession of a dangerous drug. You were charged with driving under the influence, driving without a license, hit and run, and damage to private property. On 9 May 1969, you received nonjudicial punishment (NJP) for a period of UA. On 16 June 1969, you were counseled for frequent involvement with civil and military authorities. On the same date, you began second period of UA which pasted 52 days, 5 hours, 59 minutes, and resulted in your apprehension by civil authorities.

On 15 July 1969, you were convicted by civilian authorities for possession of drugs, based on the 26 April 1969 arrest, and sentenced to probation. On 7 August 1969, you were again arrested by



civil authorities and charged with burglary. On 5 September 1969, you were convicted by special court martial (SPCM) for a period of UA. You were sentenced to confinement at hard labor, and forfeiture of pay.

As a result of your misconduct, on 27 September 1969, you were notified of the initiation of administrative separation proceedings by reason of civil conviction due to dangerous drugs, at which point, you elected to waive all your procedural rights. On 28 September 1969, your commanding officer recommended an Other Than Honorable (OTH) discharge characterization of service. On 8 October 1969, your separation proceedings were determined to be sufficient in law and fact. On 31 October 1969, the discharge authority approved and ordered an OTH discharge characterization of service due to unfitness. On 10 November 1969, you were discharged. On 5 November 1974, the Navy Discharge Review Board denied your request for a discharge upgrade based on a finding that your discharge was not related to your drug abuse.

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 a discharge upgrade and contentions that your reason separation and characterization of service was erroneous, that it warrants a discharge upgrade, and that you were eligible for separation under the guidance provided by the Secretary of Defense memorandum. 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, SPCM, and civilian conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included a drug offense. Additionally, the Board considered the prejudicial nature of your civilian misconduct on the Marine Corps. Finally, the Board found no merit to your argument that your discharge should have been upgraded based on the Laird memo. In reviewing your basis for separation, the Board noted you were discharged for a civilian conviction and not drug abuse. Therefore, the Board concurred with the Navy Discharge Board decision in your case. 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

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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.

Sincerery,	
	6/15/2022
Executive Director	
Signed by	