



**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: 3500-22  
Ref: Signature Date



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 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, 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).

During your enlistment processing you disclosed using marijuana and another controlled substance. Further, you disclosed having been arrested, charged, cited or fined for multiple traffic violations and possession of marijuana. You were granted an enlistment waiver.

You enlisted in the Marine Corps and began a period of active duty on 27 March 1985. On 3 April 1986, you commenced a period of unauthorized absence (UA) which lasted 49 days until you surrendered on 22 May 1986. On 12 June 1986, you submitted a request for separation in lieu of trial by court-martial (SILT). On 19 June 1986, a staff judge advocate review of your case found the proceedings were sufficient in law and fact. On 20 June 1986, the separation authority approved your SILT request and directed you be discharged with an Other Than Honorable (OTH) characterization of service and, on 8 July 1986, 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 promoted to █ in bootcamp; (2) you promoted to █ within a year of your enlistment; (3) your only offense was a 49 day UA, otherwise your conduct was excellent; (4) you were given the option of requesting a Good of the Service (GOS) discharge in lieu of trial by court-martial, which you did, but you requested it be withdrawn the same day by your attorney via the General's Clerk however, your request was never withdrawn and the discharge was executed several weeks later; (5) you regret not fighting this at the time; (6) you were a good Marine who made a mistake of going UA when your leave was "withdrawn" in order to be the best man at your best friend's wedding; (6) you returned weeks later on your own accord; (7) you were always ready to support your fellow Marines in whatever way you were commanded to do so; (8) your commanding officer (CO) recommended your case be forwarded to a special court-martial (SPCM) which your lawyer thought was excessive given that you returned on your own; (9) after requesting the GOS discharge be withdrawn you were ready to "take" your court-martial, whatever sentence received, and complete your enlistment; (10) you were shocked when, several weeks later, you were told to turn in your gear since you were being discharged; (11) you were unaware of time limitations regarding discharge upgrades and were intimidated by the paperwork and process; (12) you have never quit anything in your life and since your discharge you have earned a Master's Degree; and (13) you would like this one blemish on an otherwise outstanding career rectified. For purposes of clemency consideration, the Board noted you provided supporting documentation describing post-service accomplishments but no 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 SILT request and long-term UA, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact it had on your unit. Further, the Board was not persuaded by your arguments that a referral to a SPCM was excessive in light of the length of your UA. Finally, despite the opinion of your assigned defense counsel that you would not have received a punitive discharge at a SPCM, the Board concluded you already received significant mitigation and clemency for your misconduct based on the Marine Corps' decision to accept your SILT request. 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. While the Board commended your post-discharge educational accomplishments, 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,

6/17/2022

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Executive Director

Signed by █