

DEPARTMENT OF THE NAVY

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

> Docket No: 4142-22 Ref: Signature date



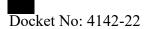
Dear Petitioner:

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 threemember panel of the Board, sitting in executive session, considered your application on 15 August 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 26 April 1972. On 21 June 1972, a Defense Investigative Service report indicated that you were arrested and charged with one count of assault with a deadly weapon, and two counts of breaking and entering in 1970. On 12 July 1972, you submitted a voluntary statement admitting to all the previous charges. On 13 July 1972, you were notified of the initiation of administrative separation proceedings by reason of pre-service police record, at which point, you elected to waive all your procedural rights. On the same date, your commanding officer (CO) recommended that no disciplinary action was taken against you and that you be retain in service. On 21 July 1972, your administrative separation proceedings were determined to be sufficient in law and fact. On the same date, the discharge authority approved your retention in the Marine Corps.

From a period beginning on 19 December 1973 to 10 April 1974, you began two periods of unauthorized absence (UA) adding to a total of 52 days. On 15 April 1974, you received

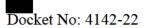


nonjudicial punishment (NJP) for disobeying a lawful order. On 1 May 1974, you began a third period of UA which lasted eight days. On 16 May 1974, you were convicted by summary court martial (SCM) for three periods of UA. You were sentenced to reduction in rank, restriction, and forfeiture of pay. On 22 June 1974, a medical officer diagnosed you with drug abuse and antisocial behavior. On 8 July 1974, you were convicted by SCM for possession and selling of a controlled substance. You were sentenced reduction in rank, confinement at hard labor, and forfeiture of pay. On 18 July 1974, you began a fourth period of UA which lasted six days and resulted in your second NJP on 25 July 1974. From a period beginning on 31 July 1974 to 2 April 1975, you began four periods of UA adding to a total of 89 days and resulting in your apprehension by civil authorities. On 24 February 1976, you were convicted by civilian authorities for robbery and sentenced to civilian confinement. On 31 January 1977, your CO recommended an Other Than Honorable (OTH) discharge characterization of service by reason of misconduct due to civil conviction. On 1 February 1977, your administrative separation proceedings were determined to be sufficient in law and fact. On 25 February 1977, the discharge authority approved and ordered an OTH discharge characterization by reason of misconduct due to civil conviction. On 3 March 1977, you were 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 for a discharge upgrade and contentions that you were not given legal due process and your mental status has changed since you were discharged from service. 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, SCMs, and civilian conviction, 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. Further, the Board took into consideration the discrediting nature of your civilian conviction on the Marine Corps. 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



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,

