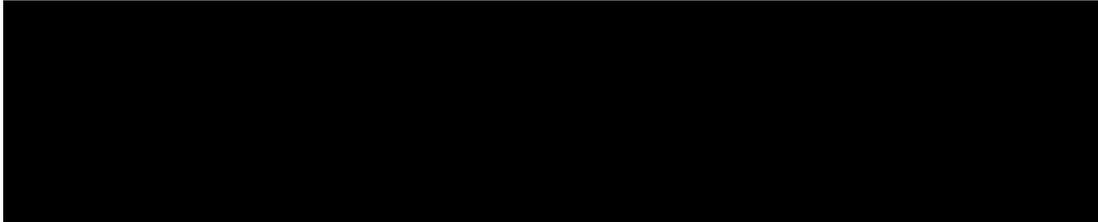




**DEPARTMENT OF THE NAVY**  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

█  
Docket No: 5124-22  
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 9 September 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).

You enlisted in the Marine Corps and entered active duty on 29 December 1976. Your pre-enlistment physical examination, on 16 December 1976, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

Your service record indicates that you have a civilian conviction, on 26 September 1977, for no financial responsibility and for displaying fictitious license plates. On 21 September 1978, you received non-judicial punishment (NJP) for two separate specifications of unauthorized absence (UA). You did not appeal your NJP. On 11 May 1978, you received NJP for five separate specifications of UA. You did not appeal your NJP.

On 6 October 1978, you were convicted at a Summary Court-Martial of UA, insubordinate conduct, and disrespectful behavior toward a commissioned officer. You were sentenced to forfeitures of pay and confinement for twenty-nine days. On 2 April 1980, you received NJP for breaking restriction. You did not appeal your NJP.

On 26 June 1980, you were convicted at a Special Court-Martial (SPCM) of two separate specifications of insubordinate conduct, communicating a threat, and escaping from confinement. You were sentenced to confinement at hard labor for three months, a reduction in rank to the lowest enlisted paygrade (E-1), and a Bad Conduct Discharge (BCD). On 10 October 1980, the Convening Authority approved the SPCM sentence.

On 16 October 1980, you commenced a period of UA. On 16 November 1980, your command declared you to be a deserter. Your UA terminated after approximately 476 days with your apprehension by civilian authorities on or about 4 February 1982.

On 1 March 1982, you submitted a voluntary written request for an administrative discharge under other than honorable conditions (OTH) in lieu of trial by court-martial for your long-term UA. You acknowledged that if your request was approved, you would receive an OTH characterization. You also expressly acknowledged and understood that with an OTH discharge you would be deprived of virtually all rights as a veteran, and you may encounter substantial prejudice in civilian life in situations wherein the type of service rendered in any branch of the Armed Forces or the character of the discharge received may have a bearing. As a result of this course of action, you were spared the stigma of a court-martial conviction for your misconduct, as well as the potential sentence of confinement and the negative ramifications of receiving a punitive discharge from a military judge. In the interim, your separation physical examination in March 1982 noted no psychiatric or neurologic conditions or symptoms. On 4 March 1982, the command Staff Judge Advocate determined that your separation proceedings were legally and factually sufficient. Ultimately, your discharge request was approved and, on 12 March 1982, you were separated from the Marine Corps with an OTH discharge characterization and assigned an RE-4 reentry code. In this regard, you were assigned the correct characterization and reentry code based on your factual situation.

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: (a) you received an OTH for actions you committed while defending yourself against people who harassed and assaulted you because of your race, (b) you served under racist superiors who continually made you the butt of their jokes, (c) throughout it all you kept a cool head, and ignored the verbal harassment and did not retaliate, (d) rather than praising you for your self-control and maturity, the Marine Corps failed to help you stop your harassers and chose to punish you for your rare acts of violence, (e) you sacrificed your own safety when you came to the aid of a USMC Sergeant (E-5) when the E-5 tried to break up a fight, (f) you sacrificed your pride when you allowed such E-5 and other superiors to harass and assault you without retaliation, (g) the Marine Corps rewarded your sacrifice by failing to rectify

the situation, punishing you unjustly, and discharging you with an OTH, and (h) you have paid for your mistakes by living a life tainted by the injustice the Marine Corps placed upon you. 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, SCM, SPCM, and request to be discharged in lieu of trial by court-martial, outweighed these mitigating factors. The Board determined that you did not provide convincing evidence you were the victim of racially driven harassment and/or retaliation. Further, the Board unequivocally did not believe that your record was otherwise so meritorious to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record during your military service. The simple fact remained is that you left the Marine Corps while you were still contractually obligated to serve and you went into a UA status for 476 days without any legal justification or excuse. The Board determined that you already received a large measure of clemency when the Marine Corps agreed to administratively separate you in lieu of trial by court-martial; thereby sparing you the stigma of a court-martial conviction and likely punitive discharge. The Board determined that your misconduct constituted a significant departure from the conduct expected of a Marine, and that the record clearly reflected your misconduct was intentional and willful and indicated you were unfit for further service. Moreover, the Board noted that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions.

The Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average calculated from your available performance evaluations during your enlistment was approximately 3.6 in conduct. Marine Corps regulations in place at the time of your discharge required a minimum trait average of 4.0 in conduct (proper military behavior), for a fully honorable characterization of service. The Board concluded that your conduct marks during your active duty career were a direct result of your pattern of serious misconduct which further justified your OTH characterization of discharge.

The Board noted that there is no provision of federal law or in Department of the Navy directives or regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. Moreover, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. Accordingly, the Board concluded that you received the correct discharge characterization based on your overall circumstances and that such characterization was in accordance with all Department of the Navy directives and policy at the time of your discharge. As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your serious misconduct clearly merited your receipt of an OTH. Even in light of the Wilkie Memo and reviewing the record holistically,



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the Board still concluded that insufficient evidence of an error or injustice exists to warrant 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,

9/12/2022

