

On 22 November 1979, you commenced another period of unauthorized absence that lasted until you surrendered on 17 January 1980. Thereafter, you submitted a written request for a discharge under Other Than Honorable conditions in order to avoid trial by court-martial for your 56-day period of unauthorized absence. On 23 February 1980, your request for discharge was granted and, on 3 March 1980, you were discharged pursuant to your request.

In 2005, you filed a petition with this Board seeking to have your discharge upgraded. On 6 January 2006, this Board issued its decision letter denying your petition. On 1 August 2013, you requested reconsideration of the Board's prior decision and, on 18 October 2013, the Board denied the request without a hearing. Subsequently, you filed another petition with this Board seeking to have your discharge upgraded. On 23 July 2015, this Board issued its decision letter denying your petition.

In your petition, you seek reconsideration of your prior cases. While it is not expressly clear in your petition that you request a medical disability retirement, you state that you injured yourself during officer candidate school (OCS) and that now you have post-traumatic stress disorder (PTSD), physical pain, depression and anxiety, withdrawal, and irritability. Thus, the Board considered your petition to include a request for a disability retirement. In support of your request, you state that you had several surgeries on your neck and back and that you are receiving Social Security Disability because you are unable to hold a job due to use of opioids. In addition, you provided several documents that provide information concerning your positive contributions and achievements you have made since the time you left the service. The Board reviewed this documentation as a request for clemency based on post-service achievements.

The Board carefully reviewed all of your contentions and the material that you submitted in support of your petition, including the medical documentation that you provided, and the Board disagreed with your rationale for relief. With respect to your provision of medical documentation, which the Board treated as a request for a medical retirement, the Board observed that, in order to qualify for military disability benefits through the Disability Evaluation System with a finding of unfitness, a service member must be unable to perform the duties of their office, grade, rank or rating as a result of a qualifying disability condition. Alternatively, a member may be found unfit if their disability represents a decided medical risk to the health or the member or to the welfare or safety of other members; the member's disability imposes unreasonable requirements on the military to maintain or protect the member; or the member possesses two or more disability conditions which have an overall effect of causing unfitness even though, standing alone, are not separately unfitting. In reviewing your record, the Board concluded the preponderance of the evidence does not support a finding that you met any of the criteria for unfitness at the time of your discharge from the Marine Corps. In fact, the Board observed that there was no evidence in your record that you were diagnosed with any qualifying unfitting conditions. To the contrary, the evidence demonstrates that you were discharged based on your misconduct and as a result of your request for discharge in lieu of facing a third court-martial. Based on this evidence, the Board concluded you were properly and appropriately discharged for misconduct and, therefore, ineligible for disability processing or military disability retirement benefits.

In addition, as noted above, the Board considered the documentation that you provided that relates to your achievements that you have accomplished post-service, including your letters of reference, certificates of achievement, and public recognition of your workplace excellence. The Board commended you for your success. In its review of these materials, the Board applied the factors set forth in the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo). Despite these significant post-service achievements, the Board felt that these positive developments fell short when compared to the significant misconduct that you engaged in while on active duty, which resulted in conviction by summary court-martial, special court-martial, the imposition of nonjudicial punishment twice, as well as leaving the service in lieu of another trial by court-martial. Further, 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. Therefore, after applying liberal consideration, the Board did not find evidence of an error or injustice that warrants granting clemency in your case. 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,

10/18/2022

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Executive Director

Signed by: █