



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. 5800-22
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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 22 February 2023. 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).

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Marine Corps and began a period of active duty on 1 February 1973. Between 11 August 1973 to 19 January 1974, you received four instances of non-judicial punishment (NJP). Your offenses were one specification of failure to obey an order or regulation, one specification of failure to be at your appointed place of duty, and three specifications of unauthorized absence (UA). Subsequently, you again went UA. Upon your return to military custody, on 30 July 1976, you submitted a written request for an undesirable discharge for the good of the service (GOS) in lieu of trial by court-martial for two specifications of being UA. Prior to submitting your request, you conferred with a military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a

discharge. As part of this discharge request, you admitted your guilt to the foregoing offenses and acknowledged that your characterization of service upon discharge would be Other Than Honorable (OTH). The separation authority approved your request, directing your commanding officer to discharge you with an OTH characterization of service. On 13 August 1976, you were discharged from the Marine Corps with an OTH characterization of service by reason of GOS.

Your DD 214 Form reflects three occasions of time lost (TL) from UA recorded as thirteen days from 4 August 1973 to 16 August 1973, fifty-eight days from 29 September 1974 to 26 November 1974, five hundred and eighty-seven days from 13 December 1974 to 22 July 1976, and eighteen days of confinement from 23 July 1976 to 10 August 1976. The sum of those four periods is six hundred and seventy-six days.

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 change your discharge character of service and contentions that you do not understand the service time lost (TL) total of six hundred and seventy-six days annotated on your DD 214 Form, you were never charged with UA, and once you were aware of the accusation of being UA for over one year you explained to your commanding officer that you were living aboard the base in the █ and aboard the █. You further assert that you accepted the GOS discharge simply because you entered military service as a courtroom alternative to jail and you served in basic engineering at █ and █ before serving in the █. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your four NJPs and GOS request, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded that it showed a complete disregard for military authority and regulations. The Board felt your extended periods of UA were a serious violation of your contractual obligation to the Marine Corps. The Board also noted that the misconduct that led to your request for GOS was substantial and, more likely than not, would have resulted in a punitive discharge and extensive punishment at a court-martial. Therefore, 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. Further, the Board concluded you were appropriately discharged pursuant to your GOS request due to your misconduct. Finally, the Board noted that you provided no evidence to substantiate your contentions and concluded the TL entries on your DD Form 214 are correct. Based on these factors, the Board determined your conduct constituted a significant departure from that expected of a Marine and continues to warrant an OTH characterization. Even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants granting you the relief you requested or granting relief as a matter of clemency or equity. 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,

3/3/2023

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Executive Director

Signed by: █