



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

██████████
Docket No: 6027-22
Ref: Signature Date

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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 4 November 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).

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 U.S. Marine Corps and began a period of active duty on 31 July 1974. On 6 September 1974, you received non-judicial punishment (NJP) for 6 days of unauthorized absence (UA). On 7 January 1975, you began a series of UA periods that culminated with a 414 day UA. After your return to military custody, on 30 April 1976, you submitted a request for separation for good of the service. You consulted with counsel and they explained your rights and the consequences and loss of benefits resulting from an Other Than Honorable (OTH) discharge. After a legal review determined your request to be sufficient in law and fact, on

11 May 1976, the separation authority approved your request and directed your discharge. Subsequently, you were discharged, on 17 May 1976, with an OTH.

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 your contentions that you had a severe learning disability/handicap that should have prevented you from enlisting in the Marine Corps, you got married while in boot camp, and your mother was ill. You argue that this was the reason you went UA. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP and request to be discharged in lieu of court-martial, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded your conduct showed a complete disregard for military authority and regulations. The Board noted that you spent more time UA during your active duty service than being on duty. Further, while the Board considered your contention regarding your learning disability/handicap and your personal issues, they also noted that you failed to provide any evidence to substantiate your contentions. Based on this factor, the Board was not persuaded by your arguments in mitigation. Finally, 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. 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. 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 upgrading your characterization of service or granting an upgraded characterization of service 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,

11/18/2022

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Executive Director
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