



**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: 6118-22  
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).

You enlisted in the U.S. Marine Corps and began a period of active duty on 1 July 1971. On 29 September 1971, you received non-judicial punishment (NJP) for 1 day unauthorized absence (UA). Then, on 24 February 1972, you were convicted at special court-martial (SPCM) for 84 days UA. You testified at your SPCM and stated you were on leave to get married when you received a letter that your mother was ill and this event caused you to be UA. You were awarded forfeiture of pay, reduction in rank and confinement with hard labor. You subsequently escaped custody and went UA on 25 February 1972. While in a UA status, you were involved in an accident where you were shot in the back of your head while in a car by an unknown assailant. You were subsequently turned over to military authorities, on 2 February 1973, and placed in pretrial restriction. You then broke restriction on two occasions. This led to your placement in pretrial confinement on 5 March 1973. Approximately a month later, you submitted a request for administrative discharge under Other Than Honorable (OTH) conditions for good of the service.

In submitting this request, you consulted with counsel and was explained your rights and the consequences and loss of benefits resulting from an OTH discharge. Subsequently, your request was approved and you were discharged, on 4 May 1973, 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 contentions that you went UA because you feared for your life. 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 these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP, SPCM, and your request for separation in lieu of trial, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded that your conduct showed a complete disregard for military authority and regulations. Further, while the Board noted you provided no evidence to substantiate your contentions and your testimony at your SPCM contradicts your assertions. Based on these factors, 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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