



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

█  
Docket No: 6563-22

Ref: Signature date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 5 December 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, 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 began a period of active duty on 31 January 1977. On 23 August 1979, you were honorably discharged from service by reason of immediate reenlistment. On 24 August 1979, you began a second period of active duty. On 22 December 1979, you began a period of unauthorized absence (UA) which lasted 24 days and resulted in nonjudicial punishment (NJP) on 20 March 1980. On 26 September 1980, you began a second period of UA which lasted 384 days and resulted in your apprehension by civil authorities. On 5 November 1981, you were convicted by special court martial (SPCM) for that period of UA. You were sentenced to a Bad Conduct Discharge (BCD), reduction to the rank of E-1, confinement at hard labor, and forfeiture of pay. On 6 January 1982, your SPCM sentence was approved. On 6 May 1982, the Naval Clemency and Parole Board denied your request for clemency. On 21 June 1982, your SPCM sentence was affirmed. On 5 October 1982, you were discharged with a BCD characterization of service by reason of SPCM conviction.

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 were exposed to contaminated water while stationed at Camp Lejeune and are seeking to upgrade your discharge with the intent to qualify for Department of Veterans Affairs (VA) benefits. For purposes of clemency and equity consideration, the Board noted you provided a character letter of support and a VA decision document.

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 SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact it had on the good order and discipline of your unit. In the Board's opinion, your period of UA lasting greater than one year was sufficiently serious to warrant a punitive discharge. Finally, 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. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Marine and continues to warrant a BCD 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 the 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,

12/29/2022

