



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: 6882-22
Ref: Signature date



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 24 October 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 26 February 1973. On 11 June 1973, you began a period of unauthorized absence (UA) which lasted 30 days and resulted in nonjudicial punishment (NJP) on 12 July 1973. On 22 July 1973, you began a second period of UA which lasted four days and resulted in NJP on 25 July 1973. On the same date, the suspended portion of your previous NJP sentence was vacated. On 4 December 1974, you began a third period of UA which lasted 12 hours, 30 minutes, which resulted in NJP on 10 December 1974. On 2 June 1975, you began a fourth period of UA which lasted six days. On 9 July 1975, you began a fifth period of UA which lasted 321 and resulted in your apprehension by civil authorities. On 14 June 1976, you requested an Other Than Honorable (OTH) discharge in lieu of trial by court martial. On 15 June 1976, your administrative separation proceedings were determined to be sufficient in law and fact. On 16 June 1976, the separation authority approved and ordered an OTH discharge characterization in lieu of trial by court martial. On the same date, you were discharged.

Post-discharge, you twice applied to the Naval Discharge Review Board (NDRB) for an upgrade to your characterization of service and were denied on 14 December 1976 and 22 February 1979.

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 contention that you requested a hardship discharge due to family circumstances and, after it was denied, you had no choice but to leave and take care of your family. For purposes of clemency and equity consideration, the Board noted you did provide two character letters of support with your application.

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 NJPs and request to be discharged in lieu of trial by court-martial, 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. The Board found that your actions showed a complete disregard for military authority and regulations. 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.

The Board noted in one of your character letters, it raises the argument that your DD Form 214 is missing information from blocks 9.c. and 10. The Board examined your record and determined a complete DD Form 214 is included with your record and contains the information missing in the DD Form 214 copy you were issued.

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,

11/17/2022

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Executive Director

Signed by █