



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: 6978-22

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 7 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, 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 6 May 1973. On 14 December 1973, you began a period of unauthorized absence (UA) which lasted 29 days and resulted in nonjudicial punishment (NJP) on 31 January 1974. On 4 March 1975, you received a second NJP for sleeping while on guard duty. On 26 February 1976, you began a second period of UA which lasted 18 days. On 19 March 1976, you began a third period of UA which lasted 52 days and resulted in your apprehension by civil authorities. On 22 April 1976, you were apprehended by civil authorities for failure to appear in court for possession of marijuana and unsafe tires. You were placed in civilian confinement and released to military authorities on 9 May 1976. On 25 May 1976, you were convicted by summary court martial (SCM) for two periods of UA. You were sentenced to reduction to the rank of E-1, confinement at hard labor, and forfeiture of pay. On 14 June 1976, you began a fourth period of UA which lasted three days and resulted in your apprehension by civil authorities. On 17 June 1976, you escaped from lawful custody and began a fifth period of UA which lasted 44 days. On 30 July 1976, your UA charges

were referred for trial by special court martial (SPCM). On 4 October 1976, you plead guilty of the felony offense of accessory after the fact of murder in the State of █ Superior Court Division and were sentenced to not less than three years confinement. On 13 December 1976, you were notified of the initiation of administrative separation proceedings by reason of civil court conviction, at which point, you elected your right to an Administrative Discharge Board (ADB) hearing. On 14 April 1977, the ADB recommended you were administratively separated from service with an Other Than Honorable (OTH) discharge characterization service by reason of civil court conviction. On 26 April 1977, your administrative separation proceedings were determined to be sufficient in law and fact. On 3 May 1977, the separation authority approved and ordered an OTH discharge characterization by reason of conviction by civil court. On 6 May 1977, you were discharged.

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 were incarcerated and unable to finish your enlistment. 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 NJPs, SCM, and civil conviction 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. Additionally, the Board noted the discrediting nature of your civilian conviction that involved being an accessory to murder and a minimum sentence of three years confinement. 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 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,

12/1/2022

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Executive Director
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