



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

█  
Docket No: 7135-22  
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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 16 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, 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 Marine Corps and began a period of active duty on 15 July 1977. On 8 March 1978, you were subject to nonjudicial punishment (NJP) for a violation of Article 86, unauthorized absence. On 11 July 1978, you were arrested by civil authorities, held in custody on charges of burglary, and remained in an unauthorized absence for the duration of your confinement. You were eventually convicted of a civil offense of possession of a controlled substance, on 10 October 1978, and released on probation. On 17 November 1978, you requested discharge for the good of the service, in which you acknowledged that you understood your discharge would be under Other Than Honorable (OTH) conditions. Notably, a legal review of your request opined that your enlistment was potentially void due to apparent recruiter complicity in fraud by not listing all of your juvenile offenses on your application for enlistment and, therefore, recommended administrative discharge in lieu of trial. After your request was approved, you were discharged, on 8 December 1978, with final proficiency and conduct marks of only 3.0 and 2.43 respectively.

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 to upgrade your discharge and your contentions that you absented yourself without leave because you discovered that the water buffaloes in your unit's motor pool at [REDACTED] were being filled with unsafe water, but you feared reprisal after addressing it with your company command and being told there was nothing wrong and ordered to keep your mouth shut. Additionally, you assert that you were advised your discharge in lieu of trial would result in a characterization of General (Under Honorable Conditions). For purposes of clemency and equity consideration, the Board noted you provided a document from the Department of Veterans Affairs but no 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, civilian conviction, and good of the discharge request, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. In addition, the Board considered the discrediting effect your civilian conviction likely had on the Marine Corps. Further, the Board was not persuaded by your arguments that you were informed your characterization of service would be General (Under Honorable Conditions) based on your 17 November 1978 request in which you acknowledged, "I understand that my discharge from the Naval Serve, effected by acceptance of this request by the discharge authority, will be under conditions other than honorable..." Finally, with respect to your contentions of injustice and reprisal, the Board found your rationale unpersuasive in view of your arrest by civil authorities and resulting civilian confinement. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member 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 is attached 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,

1/12/2023

[REDACTED]

Executive Director

Signed by: [REDACTED]