



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

Docket No: 7763-22

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 31 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).

On 6 January 1971, you enlisted in the Marine Corps under the Ground Group I Enlistment Program with MOS preference listed as 1371, Combat Engineer. On the same date, you began a period of active duty. On 2 August 1971, you began a period of unauthorized absence (UA) which lasted 8 days and resulted on nonjudicial punishment (NJP) on 27 August 1971. On 23 August 1971, you began a second period of UA which lasted 53 days and resulted in your apprehension by civil authorities. On 22 November 1971, you were convicted by special court martial (SPCM) for that period of UA. You were sentenced to reduction to the rank of E-2 and forfeiture of pay. On 25 November 1971, you began a third period of UA which lasted 111 days. On 2 May 1972, your commanding officer responded to your congressmen inquiry and informed him that you enlisted for assignment within Ground Group I under the Ground Enlistment Program. This group includes MOS 1371, Combat Engineer and MOS 0341, Mortar Man. At the time, your enlistment preference of assignment was the 1371 Occupational field. This is only an indicated preference and in no way guarantees assignment to a particular field. You

acknowledged an understanding of the nature and terms of your enlistment through completion of item 54 of his Enlistment Contract (DD Form 4). On 29 May 1972, you began a fourth period of UA which lasted 101 days. On 9 October 1972, you began a fifth period of UA which lasted three days. On 12 May 1972, you were convicted by SPCM for two periods of UA. You were sentenced to confinement at hard labor and forfeiture of pay. On 23 January 1973, you were convicted by SPCM for two additional periods of UA. You were sentenced to confinement at hard labor and forfeiture of pay. On 14 May 1973, you began a sixth period of UA which lasted 125 days. On 23 September 1973, you began a period of UA which lasted 1099 days. On 29 July 1975, you were charged with four periods of UA. On 14 October 1976, you requested an Other Than Honorable (OTH) discharge characterization of service in lieu of trial by court martial. On 21 October 1976, the separation authority approved and ordered your OTH discharge characterization in lieu of trial by court martial. On 1 November 1976, 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 guaranteed an MOS of 1371 Combat Engineer vice MOS 0341 Mortarman. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

Based upon this 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 multiple SPCMs, 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 concluded your conduct showed a complete disregard for military authority and regulations. Ultimately, the Board did not find your arguments regarding your assigned MOS to be persuasive and determined you were appropriately held accountable for your intentional decisions to enter into multiple periods of UA. The Board noted that you were afforded ample opportunities to correct your conduct issues but refused to do so. 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 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,

11/21/2022

