



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: 8038-22

Ref: Signature date

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Dear █

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).

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Marine Corps and began a period of active duty on 30 January. On 11 January 1974, you began a period of unauthorized absence (UA) which lasted 5 hours and 14 minutes and resulted in nonjudicial punishment (NJP) on 18 January 1974. On 21 June 1974, you received a second NJP for disobeying a lawful order. On 4 February 1975, you received a third NJP for failure to report to your prescribed place of duty. On 28 January 1976, you were apprehended by civil authorities and charged with possession of marijuana. On 4 February 1976 and 30 Mar 1976, you received NJP in two occasions for failure to report to your prescribed place of duty. Subsequently, you were charged with larceny of government property. On 12 May

1976, you requested to be discharged for the Good of the Service in lieu of trial by court martial. In your request, you acknowledge that your separation would result in an undesirable (Other Than Honorable (OTH)) discharge. On 13 May 1976, your administrative separation proceedings were determined to be sufficient in law and fact. On 17 May 1976, the separation authority approved your request for a discharge in lieu of trial by court martial. On 24 May 1976, you were discharged with an OTH.

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 issued the wrong discharge characterization and told that it would be upgraded after certain amount of years. For purposes of clemency and equity consideration, the Board noted you provided four 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 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. Further, the Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. Finally, the Board found no evidence in your record to support your contention that your discharge was issued erroneously. Relying on your request for a discharge in lieu of trial by court-martial, the Board concluded you were fully aware that your request would result in an OTH characterization. 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. While the Board commends your post-discharge accomplishments and good character, 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,

12/30/2022

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Executive Director

Signed by: █