



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. 8231-22
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. 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 6 February 2023. 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).

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You entered active duty with the Marine Corps on 30 December 1971. On 5 June 1972, you went into an unauthorized absence (UA) status for one day. On 26 July 1972, you received non-judicial punishment (NJP) for UA totaling 15 days, disobeying a lawful order, and failure to obey a lawful order. On 1 August 1972, a summary court-martial (SCM) convicted you of UA totaling five days. On 3 August 1972, you received an additional NJP for absence from appointed place of duty. On 17 November 1972, you were charged with three specifications of UA totaling 82 days. Subsequently, you were notified of pending administrative separation action by reason of misconduct due to frequent involvement with military authorities. After you waived your rights, your commanding

officer (CO) forwarded your package to the separation authority (SA) recommending your discharge with an Other Than Honorable (OTH) characterization of service. The SA approved the CO's recommendation and directed an OTH characterization of service by reason of misconduct due to frequent involvement with military authorities. On 9 April 1973, you were so 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 to upgrade your discharge and contention you were stationed at Camp Lejeune during the contaminated water crisis, which resulted in your current medical conditions. For the purposes of clemency and equity consideration, the Board noted provided medical documentation 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 NJPs, SCM, and lengthy periods of UA, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact your conduct had on the good order and discipline of your command. The Board determined your conduct was intentional and showed a complete disregard for military authority and regulations. 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. While the Board carefully considered the evidence you submitted in mitigation, 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 granting you the relief you requested or granting relief as a matter of clemency or equity. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

Finally, Public Law 112-154, "Honoring America's Veterans and Caring for ██████████ Families Act of 2012," requires the Veterans Administration to provide health care to veterans with one or more of 15 specified illnesses or conditions. You should contact the nearest office of the DVA concerning your right to apply for benefits or appeal an earlier unfavorable determination.

You are entitled to have the Board reconsider its decision upon 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,

2/15/2023

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Executive Director
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