



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

██████████
Docket No. 8358-22
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 22 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).

You enlisted in the U.S. Marine Corps and began a period of active duty on 30 November 1970. On 4 February 1971, you received non-judicial punishment (NJP) for failure to obey a lawful order. Then, on 12 March 1971, you made a sworn statement regarding preservice use of marijuana, acid and hash and that you did not disclose this to your recruiter. As a result, you were notified for separation, on 31 March 1971, and you waived your rights to consult with counsel and your right to an administrative board. After being notified for separation, you began a period of unauthorized absence (UA) on 20 April 1971. Your Commanding Officer (CO) made his recommendation to the Separation Authority (SA) that you be discharged for fraudulent enlistment. The SA directed you be discharge with an Other Than Honorable (OTH) characterization. You returned from UA on 7 June 1971 and received your second NJP for your 48 days UA. You were then discharged on 22 June 1971.

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 an upgrade in your characterization of service so you can have more comforts in life and your contentions that you just turned 69 and have interest in using your experience in the trucking field to possibly being a civilian contractor, you have a four year college equivalency score and was guaranteed in writing for OCS and you were told afterwards the Marines do not have to honor that because it was “wartime,” you were given a MOS as a gunner on a helicopters, you were not going to fight that way in a war you did not believe in, you were not able to renew your CDL in 2019 and was told your DD Form 214 doesn’t mean anything, and you would have to replace your green card that was taken from you when you enlisted. 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 two NJPs and admission of pre-service drug abuse, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and determined it showed a complete disregard for military authority and regulations. Further, the Board concluded that your discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service, which was terminated by your separation with an OTH. Finally, the Board also 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. 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 granting you the relief you requested or granting relief 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 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,

3/2/2023

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Executive Director
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