



**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. 8550-22  
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 8 March 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 originally enlisted in the U.S. Marine Corps and entered active duty on 26 February 1975. On 10 June 1975, you commenced a period of unauthorized absence (UA) that terminated after twenty-two days on 2 July 1975. On 27 August 1975, you were convicted at a Summary Court-Martial (SCM) for your 22-day UA. You were sentenced to hard labor without confinement, forfeitures of pay, and restriction for thirty days. The Convening Authority approved the SCM sentence as adjudged but suspended the restriction.

On 29 March 1978, you received NJP for UA. You did not appeal your NJP. On 6 June 1978, you commenced a period of UA that terminated after five days on 11 June 1978. On 25 July 1978, you received NJP for your five-day UA. You did not appeal your NJP.

On 6 September 1978, you commenced a period of UA that terminated after eighteen days on

24 September 1978. On 31 October 1978, you commenced another UA and you never returned to military authority after such date. On 19 January 1979 your command preferred court-martial charges for your UA that commenced on 31 October 1978.

On 4 August 1983, the Marine Corps notified you by registered U.S. Mail of its intent to administratively separate you by reason of misconduct due to the commission of a serious offense for your long-term UA. After you did not respond to the notification with your rights election in a timely fashion, this action acted as a waiver of all rights in connection with your administrative separation. Ultimately, on 1 February 1984, you were discharged in absentia from the Marine Corps with an under Other Than Honorable conditions (OTH) discharge characterization and assigned an RE-4 reentry code.

On 11 April 1990, the Naval Discharge Review Board denied your application for discharge upgrade relief.

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: (a) when you left ██████████ you were supposed to be getting released early from the Marine Corps to attend a technical school and further your education, but somehow an admin clerk said your paperwork got misplaced, and (b) at this point a discharge upgrade seems like the right thing to do. For purposes of clemency and equity consideration, the Board noted you did not provide documentation describing post-service accomplishments or advocacy letters.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. The Board unequivocally did not believe that your record was otherwise so meritorious to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record during your military service. The simple fact remained is that you left the Marine Corps while you were still contractually obligated to serve and you went into a UA status multiple times without any legal justification or excuse. The Board concluded that, if anything, the Marine Corps granted you significant clemency by not court-martialing instead for your long-term UA which almost certainly would have resulted in a BCD at a SPCM and a term of lengthy confinement. The Board determined that your misconduct constituted a significant departure from the conduct expected of a Marine, and that the record clearly reflected your misconduct was intentional and willful and indicated you were unfit for further service. Moreover, the Board noted that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions.

The Board noted that there is no provision of federal law or in Department of the Navy directives or regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. Moreover, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or

enhancing educational or employment opportunities. Thus, the Board concluded that you received the correct discharge characterization based on your overall circumstances and that such characterization was in accordance with all Department of the Navy directives and policy at the time of your discharge. 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,

3/16/2023

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Executive Director

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