



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

█
Docket No. 8617-22

Ref: Signature Date



Dear █

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 1 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 enlisted in the Marine Corps and entered active duty on 25 September 1972. On 14 February 1973, you received non-judicial punishment (NJP) for a two-day unauthorized absence (UA). You did not appeal your NJP. On 5 June 1973, you received NJP for UA and for failing to obey a lawful order. You did not appeal your NJP. On 9 July 1973, your command issued you a "Page 11" counseling sheet (Page 11) informing you that your continued frequent involvement with military authorities may result in an administrative separation.

On 6 August 1973, you were convicted at a Special Court-Martial (SPCM) of UA, failing to obey a lawful order, and breaking restriction. You were sentenced to a reduction in rank to the lowest enlisted paygrade (E-1), forfeitures of pay for two months, restriction for two months, and hard labor without confinement for two months. On 21 January 1974, the Convening Authority (CA) approved the SPCM sentence, but suspended any forfeitures of pay in excess of one month.

On 14 February 1974, your command issued you a Page 11 advising you on the prerequisites for an honorable discharge characterization. The Page 11 advised you that any further substandard performance will result in a less than honorable discharge.

On 19 February 1975, contrary to your pleas, you were convicted at another SPCM of three separate specifications of UA, each lasting three days, twenty three days, and sixty-seven days, respectively. You were sentenced to confinement at hard labor for three months, forfeitures of pay, a reduction in rank to the lowest enlisted paygrade (E-1), and a discharge from the Marine Corps with a Bad Conduct Discharge (BCD). You were released from confinement on 2 May 1975. On 23 May 1975, the CA approved the SPCM sentence.

On or about 26 May 1975, you received NJP for UA lasting less than one day. You did not appeal your NJP. On 15 July 1975, you received NJP for UA lasting four days. You did not appeal your NJP.

On 22 September 1975, the Naval Clemency and Parole Board denied you any clemency. Upon the completion of SPCM appellate review in your case, on 6 February 1976, you were discharged from the Marine Corps with a BCD and assigned an RE-4 reentry code.

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) you were told your BCD would be upgraded to a General (Under Honorable Conditions) characterization of service after six months but it never happened, (b) in your youth you were surrounded by bad influences and made bad choices, (c) haircuts and UA were not bad enough to warrant a BCD, (d) you were a squared away Marine and proud of your service and country, and (e) you would like to know you active duty service was appreciated and would like to retrieve some honor for doing your part. 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 an upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board also determined that your pattern of misconduct constituted a significant departure from the conduct expected of a Marine and was in no way minor in nature, and that the record clearly reflected your misconduct was intentional and willful and demonstrated 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 observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your



overall active duty trait average in conduct was approximately 3.2. Marine Corps regulations in place at the time of your discharge recommended a minimum trait average of 4.0 in conduct (proper military behavior) for a fully honorable characterization of service. The Board concluded your conduct marks during your active duty career were a direct result of your serious misconduct which further justified your BCD and RE-4 reentry code.

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. Lastly, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating certain veterans' benefits, or enhancing educational or employment opportunities. Accordingly, the Board determined that there was no impropriety or inequity in your discharge, and concluded that your misconduct and disregard for good order and discipline clearly merited your BCD. In the end, the Board concluded that you received the correct discharge characterization based on the totality of your circumstances, and that such action was in accordance with all Department of the Navy directives and policy at the time of your discharge.

The Board also noted that, although it cannot set aside a conviction, it might grant clemency in the form of changing a characterization of discharge, even one awarded by a court-martial. However, the Board concluded that despite your contentions this is not a case warranting any clemency. The simple fact remains 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. Accordingly, the Board did not find any evidence of an error or injustice in this application that warrants upgrading your BCD. 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,

3/20/2023

