



**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. 8688-22

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 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).

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 originally enlisted in the Marine Corps and entered active duty on 17 June 1969. Your last reenlistment occurred on 4 September 1974 for a period of three years.

On 2 June 1975, you commenced a period of unauthorized absence (UA) that terminated after 117 days, on 27 September 1975, with your surrender to civil authorities. You were returned to military control in █ on 3 October 1975. On 25 November 1975, you received non-judicial punishment (NJP) for UA lasting less than one day. You did not appeal your NJP.

On 25 November 1975, you were convicted at a Special Court-Martial (SPCM) for your 117-day UA. You were sentenced to a reduction in rank to paygrade E-5.

On 19 December 1975, you received NJP for being absent from your appointed place of duty for approximately four hours. You did not appeal your NJP. On 19 December 1975, your command issued you a "Page 11" counseling warning (Page 11). The Page 11 advised you that any further involvement of a discreditable nature could result in a recommendation for an undesirable discharge. On 14 January 1976, the Convening Authority approved the SPCM sentence as adjudged.

On 9 January 1976, you commenced a period of UA that terminated after 183 days with your surrender to military authorities on 10 July 1976. On 11 August 1976, you submitted a voluntary written request for an administrative discharge under Other Than Honorable conditions (OTH) for the good of the service in lieu of trial by court-martial for your long-term UA. Prior to submitting your request you consulted with counsel. You acknowledged that if your request was approved, you would receive an OTH characterization. You also expressly acknowledged and understood that with an OTH discharge you would be deprived of virtually all rights as a veteran, and you may encounter substantial prejudice in civilian life in situations wherein the type of service rendered in any branch of the Armed Forces or the character of the discharge received may have a bearing. As a result of this course of action, you were spared the stigma of a court-martial conviction for your misconduct, as well as the potential sentence of confinement and the negative ramifications of receiving a punitive discharge from a military judge. Ultimately, your discharge request was approved and, on 24 August 1976, you were separated from the Marine Corps with an OTH discharge characterization and assigned an RE-4 reentry code. In this regard, you were assigned the correct characterization and reentry code based on your factual situation.

On 21 June 1977, 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) you have been a "model citizen" since discharge, working for the City of █ Department of Community Development as the first African American person to work within City Hall, and you assisted low income people with housing assignments, (b) you recently retired from the Department of Veterans Affairs after working for the VA for over twenty years, (c) you earned three discharges, and two of those were Honorable, (d) your military record was excellent and you achieved E-5 Sergeant in 2 years and ultimately the rank of E-6 Staff Sergeant before your disciplinary actions, and (e) you wish you could have handled your personal issues in a better manner and were wrong to go AWOL. 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 second long-term UA which almost certainly would have resulted in a BCD at a SPCM and a term of 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. While the Board commends your post-discharge accomplishments, 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

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Executive Director

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