



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

■  
Docket No: 8757-22  
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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 5 December 2022. 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 this 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 United States Marine Corps and commenced a period of active duty on 10 January 1975. A year later, you began an extended period of unauthorized absence (UA) totaling 174 days, from 15 January 1976 to 10 June 1976. The record indicates that you then commenced a second period of UA from 17 June 1976 to 3 September 1976, totaling 78 days. On 23 September 1976, you submitted a "Request for Undesirable Discharge for the Good of the Service" (Discharge in Lieu). The Separation Authority (SA) granted your request and, on 12 October 1976, you were discharged from the Marine Corps for the good of the service with an Other than Honorable (OTH) characterization of service 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 contentions that: (1) your performance marks during your period of service were "level fours", (2) your assertion that ■ said he could get you a "good of the Service" discharge, and (3) your assertion that you took your wife home to be with

family. For purposes of clemency consideration, the Board noted that you did not provide advocacy letters or documentation of post-service accomplishments.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your 252-day periods of UA, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it left your unit gapped, thereby negatively impacting mission accomplishment. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command. The Board determined that absenting yourself from your unit without authorization is contrary to Marine Corps values and policy. The Board highlighted that you did get a “Good of the Service” discharge, which is exactly what you requested on 23 September 1976. You acknowledged that your “discharge from the Naval Service, effected by acceptance of this request by the discharge authority, will be with an undesirable discharge. Further, you stated “I understand that an undesirable discharge is a discharge under *Other than Honorable* conditions and that as a veteran under both Federal and State legislation, I may not be eligible for any benefits earned by service under honorable conditions, and that I may expect to encounter substantial prejudice in civilian life in situations....” The Board noted that the SA already granted you clemency by accepting your separation in lieu of trial by court martial, thereby allowing you to avoid a possible court martial conviction and/or punitive discharge.

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. The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. Lastly, 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. As a result, the Board determined that there was no impropriety or inequity in your discharge, and even under the liberal consideration standard, the Board concluded that your misconduct clearly merited your receipt of an OTH. 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 upgrading your characterization of service or granting an upgraded characterization of service 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,

1/3/2023

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