



**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. 0106-23

Ref: Signature Date



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 you did not file your application in a timely manner, the statute of limitations was waived in the interest of justice. A three-member panel of the Board, sitting in executive session, considered your application on 13 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 this Board. Documentary material considered by the Board consisted of your application together with all material submitted in support thereof, relevant portions of your service 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, at the age of 17, and commenced a period of service on 25 August 1972. On 13 July 1973, you were found guilty at Special Court Martial (SPCM) of violating Uniform Code of Military Justice Article 86, for two periods of unauthorized absence (UA) totaling 112 days. You were sentenced to 120 days of confinement and forfeitures of pay.

On 4 March 1974, at the age of 18, you were convicted by the Municipal Court of the City of █ on charges of larceny, receiving stolen goods, attaching regular plates and operating a vehicle without driving license. You were sentenced to a period of incarceration.

As a result, on 10 June 1974, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to your civilian conviction. You waived your right to consult with qualified counsel and your right to present your case at an administrative separation board. On 28 June 1974, the Separation Authority directed your discharge from the

Marine Corps for misconduct with an Other than Honorable (OTH) characterization of service. On 11 July 1974, you were so discharged and assigned an RE- 4 reenlistment code.

You previously petitioned this Board and were denied relief on 7 November 2018.

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: (a) your desire to upgrade your characterization of service, (b) your contention that you were a minor when you joined the Marines and therefore lacked the capacity to make rational choices, (c) your assertion that you had a troubled youth that involved street gangs, and (d) that you have experienced remorse and substantial emotional hardship due to the conduct that led to your discharge, which has resulted in inequitable punishment. For purposes of clemency and equity consideration, the Board noted that you provided character letters in support of your request.

After thorough review, the Board concluded that the potentially mitigating factors were insufficient to warrant relief. Specifically, the Board felt that your misconduct, as evidenced by your SPCM and civilian conviction, outweighed these mitigating factors. The Board considered the seriousness of your misconduct and the fact that it involved a substantial period of UA and criminal activity that resulted in civilian incarceration. The Board also considered the likely negative impact your conduct had on the good order and discipline of your command along with the discrediting nature of your civilian conviction. The Board found that your active duty misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should otherwise not be held accountable for your actions. In making this finding, the Board noted you were over the age of 18 when convicted by civilian authorities. As a result, the Board determined your conduct constituted a significant departure from that expected of a Marine and continues to warrant an OTH characterization.

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. While the Board carefully considered the evidence you submitted in mitigation, 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. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. 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,

3/21/2023

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Executive Director

Signed by: █