



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. 506-23
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 reconsideration application on 24 April 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 U.S. Marine Corps and entered active duty on 14 November 1969. Your pre-enlistment physical examination, on 23 October 1969, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms.

On 12 February 1970, you received non-judicial punishment (NJP). You did not appeal your NJP. As punishment you had to serve thirty days in correctional custody.

On 31 March 1971, you were convicted at a Summary Court-Martial (SCM) of disrespect towards a superior commissioned officer, and two separate specifications of insubordinate conduct. You were sentenced to a reduction in rank to the Private First Class (E-2) and forfeitures of pay. On 3 April 1971, the Convening Authority approved the SCM sentence.

On 10 May 1971, you were convicted at a SCM for assault. You were sentenced to confinement for thirty days. On 16 June 1971, you commenced a period of unauthorized absence (UA) that terminated after two days on 18 June 1971.

On 19 August 1971, you submitted a voluntary written request for an administrative discharge for the good of the service to escape trial by court-martial for the charges of UA, and for failing to obey a lawful order. Prior to submitting this voluntary discharge request you conferred with a qualified military lawyer, at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. You indicated you were entirely satisfied with your counsel's advice, and you acknowledged you were guilty of both charged offenses. You acknowledged that an undesirable/under Other Than Honorable conditions (OTH) discharge may deprive you of virtually all veterans' benefits based upon your current period of active service, and that you may expect to 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 discharge received therefrom may have a bearing. Ultimately, on 2 September 1971, you were separated from the Marine Corps with an OTH discharge characterization 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) upon your return from ██████████ you were called into the Captain's office and told to sign your discharge, and (b) your options were to accept the discharge or to be sent to prison for three years. For clemency and equity purposes, the Board noted that 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 did not believe that your record of service was otherwise so meritorious as 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. The Board determined that characterization under OTH conditions is generally warranted for misconduct and is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Marine. The Board determined 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.

Finally, the Board noted you provided no evidence to substantiate your contentions. The Board also noted, contrary to your contentions, that under the Uniform Code of Military Justice, the maximum confinement you could have received for your two offenses was only seven (7) months, and not three years. As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your misconduct and disregard for good order in discipline clearly merited your discharge. Even in light of the Wilkie Memo and

