



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. 1942-23

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 application on 14 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 4 March 1976. Your enlistment physical, on 11 February 1976, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

On 5 August 1976, you commenced an unauthorized absence (UA). On 5 September 1976, your command declared you to be a deserter and dropped you from the rolls. Your UA terminated after 107 days, on 20 November 1976, with your arrest by civilian authorities.

On 29 November 1976, you commenced another UA. On 29 December 1976, your command declared you to be a deserter and dropped you from the rolls. Your UA terminated after 58 days, on 26 January 1977, with your surrender to military authorities. On 14 February 1977, you

commenced another UA. Your UA terminated after eight (8) days, on 22 February 1977, with your surrender to military authorities.

On 11 April 1977, pursuant to your guilty pleas, you were convicted at a Special Court-Martial (SPCM) of your three separate specifications of UA totaling 173 days. You were sentenced to confinement at hard labor for sixty (60) days (deferred), 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). On 22 April 1977, you waived your right to request restoration in the naval service and requested execution of the BCD. On 27 April 1977, you commenced another UA that terminated after two (2) days, on 29 April 1977, with your surrender to military authorities. On 10 May 1977, the Convening Authority approved the SPCM sentence as adjudged, except rescinded the deferral of all confinement. On 3 August 1977, the U.S. Navy-Marine Corps Court of Military Review affirmed the SPCM findings and sentence as approved by the Convening Authority. On 4 August 1977, the Naval Clemency and Parole Board denied you any clemency relief. Upon the completion of SPCM appellate review in your case, on 3 January 1978, 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) your command, due to racial prejudice, abused its power by awarding you the most extreme punishment available with the intention of harming you forever, (b) while suffering from extreme verbal abuse constantly and the command's complete disregard for your family crisis, you made bad decisions, but such decisions did not warrant a stain on your life and the removal of any chance at substantial employment prospects, and (c) post-service you were a model citizen by maintaining consistent employment, you were involved in church, and you were married for 45 years, all of which demonstrated that your BCD was not evident of your character. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. The Board 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 determined the record reflected that your 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 not be held accountable for your actions.

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 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 was not a case

warranting any clemency as you were properly convicted at a SPCM of serious misconduct. 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 on no less than six separate times without any legal justification or excuse. 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. 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 and discipline clearly merited your discharge. 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,

4/20/2023

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Executive Director

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