



**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. 1956-23  
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 22 May 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).

After a period of service in the Marine Corps Reserve, you entered active duty with the Marine Corps on 17 June 1977. On 18 July 1977, you were diagnosed with Flat feet that existed prior to enlistment (EPTE). During the period from 6 April 1978 and 29 June 1978, you received two non-judicial punishments (NJP) for absence from appointed place of duty and three specifications of disobeying a lawful order or regulation. On 31 January 1979, a special court-martial (SPCM) tried you on the charges of fraudulent enlistment, unauthorized absence (UA) for nine days, sticking a .45 caliber pistol into the ribs of another Marine, breaking restrictions, conspiracy to commit larceny of a motor vehicle, arson of a motor vehicle, violating post regulations and assault. Ultimately, the General Court-Martial Authority dismissed all charges due to a lack of jurisdiction. On 3 February 1979, you command received a warrant for your arrest from the Municipal Court of █ due to pending felony charges in civil court for larceny and arson of a motor vehicle.

Subsequently, you were notified of pending administrative separation action by reason of misconduct due to fraudulent enlistment. After you made a written statement that you informed your recruiter of your civilian misconduct, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge with an Other Than Honorable (OTH) characterization of service. The SA approved the CO's recommendation and directed an OTH characterization of service by reason of misconduct due to fraudulent enlistment. On 13 April 1979, you were so discharged.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. On 18 December 1990, the NDRB denied your request after determining that your discharge was proper as issued.

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 to upgrade your discharge and contentions that your Pro and Con Marks qualified you for an Honorable discharge and your lawyer advised you to claim your recruiter lied. In addition, you contended your lawyer told you the Marine Corps was upset about your SPCM results and would retaliate by giving you a less than Honorable discharge. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs and fraudulent enlistment, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact your conduct had on the good order and discipline of your command. Further, while the Board took into consideration your contentions, the Board noted that there is no evidence in your record, and you submitted none, to substantiate your allegations. In your case, the record clearly shows your enlistment was fraudulent due to you intentionally withholding information that would make you ineligible for enlistment. Finally, the Board noted that, although one's service is generally characterized at the time of discharge based on performance and conduct throughout the entire enlistment, the conduct or performance of duty reflected by only a single incident of misconduct may provide the underlying basis for discharge characterization. In your case, the Board determined your withholding of pre-service criminal activity was sufficient to support your discharged and assigned characterization of service. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. 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,

6/1/2023

[REDACTED]

Executive Director

[REDACTED]