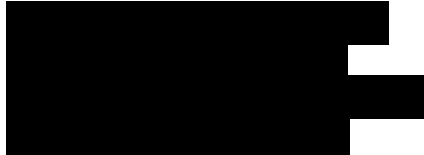




DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

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Docket No. 2162-23
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 your application was not submitted in a timely manner, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session, considered your application on 27 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 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 28 June 1978. Immediately after your recruit training, you began a significant period of unauthorized absence (UA), from 6 February 1979 to 16 May 1980, totaling 461 days. You had a second period of UA from 23 May 1980 to 19 June 1980, totaling 28 days. On 23 June 1980 you were placed in pre-trial confinement pending Special Court Martial (SPCM) charges. On 25 July 1980, you requested discharge in lieu of trial by court martial (SILT). Your request was denied and, on 19 August 1980, you were found guilty at SPCM of violating Uniform Code of Military Justice (UCMJ) Article 86, for two specifications of UA totaling 489 days. You were awarded six months confinement and reduction in rank to E-1.

On 26 May 1981, you again went UA until 31 May 1981, for a total of six days. You went UA for another six-day period from 17 July 1981 to 22 July 1981. On 21 September 1981, you resubmitted your SILT request and your request was approved. On 28 October 1981, the separation authority directed your administrative discharge with an Other Than Honorable (OTH) characterization of service and assigned an RE-4 reenlistment 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: (1) your desire to upgrade your characterization of service and change your narrative reason for separation, (2) your complete service record, (3) your age and maturity at the time of your service, and (4) the negative impact of an OTH characterization of service. For purposes of clemency and equity consideration, the Board noted that you provided 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 SPCM conviction and SILT request, outweighed these mitigating factors. In making this finding, the Board considered your repeated misconduct and its negative impact on 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 your misconduct was contrary to Marine Corps values and policy. The Board also noted that the misconduct that led to your request to be discharged in lieu of trial by court-martial was significant in light of your previous misconduct and, more likely than not, would have resulted in a punitive discharge and extensive punishment at a court-martial. Therefore, the Board determined that you already received a large measure of clemency when the convening authority agreed to administratively separate you in lieu of trial by court-martial; thereby sparing you the stigma of a court-martial conviction and likely punitive discharge. 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.

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. 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. Therefore, 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,

4/18/2023

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Executive Director

Signed by: █