



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

██████████  
Docket No. 3882-23  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 6 October 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 to 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 Marine Corps and began a period of active duty on 27 June 1979. You absented yourself without authority for a period of 155 days from May 1980 through October 1980 until you surrendered to military authority. On 14 January 1981, you were tried by Special Court-Martial (SPCM) and convicted of a single violation under Article 86 of the Uniform Code of Military Justice (UCMJ) for unauthorized absence (UA). Following your release from confinement, you again absented yourself without authority; initially for a brief period from 8 June 1981 to 10 June 1981, then for an extended period totaling 1659 days from 11 August 1981 through 26 December 1985. After you again surrendered yourself to military authority, you submitted a voluntary request separation in lieu of trial by court-martial in which you admitted guilt to both UA periods and acknowledged that your discharge characterization would likely be unfavorable. Your request was approved, and you were discharged under Other Than Honorable (OTH) conditions on 23 January 1986.

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 to “Honorable” and change your narrative reason for separation to “miscellaneous” with an appropriate corresponding separation code, as well as your contentions that you performed well during your recruit training until you suffered a foot injury, which required you to recycle through the training pipeline and resulted in a loss of your guaranteed military occupational specialty. You state that you continued to suffer additional injuries related to the fracture in your foot, to include knee, ankle, and back injuries, which impacted your performance and the way you were treated within your unit. You allege that, after being released from confinement following your SPCM conviction, your executive officer threatened to court-martial you again for dereliction of duty due to your injuries; therefore, you again absented yourself without authority because you believed that you would be returned to the confinement. For purposes of clemency and equity consideration, the Board noted you submitted five letters of support attesting to your good character and accomplishments.

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 SPCM and request to be discharged in lieu of trial by court-martial, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Further, the Board also noted that the misconduct that led to your request to be discharged in lieu of trial by court-martial was substantial 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. Additionally, the Board noted that your service health records reflect that you did, in fact, experience a variety of physical injuries. However, absent a charge of malingering or a behavior issue unrelated to your physical impairments, the Board found it improbable that you were likely to face additional charges. Likewise, having previously contested your first UA offense with the assistance of military defense counsel, the Board observed that you were familiar with your access to legal counsel with respect to military justice matters and could have chosen to seek such counsel rather than again absenting yourself. Although the Board concurred that you have submitted considerable evidence with respect to applicable clemency factors, the Board found the scope of your prolonged absences to constitute serious misconduct in proportion to the comparatively brief period of time you actually served without being absent. 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. 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 the 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 is attached 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,

10/24/2023

