



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. 6671-23
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 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 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 began a period of active duty service on 5 November 1968. Your pre-enlistment physical examination, on 5 November 1968, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms.

On 18 May 1970, you commenced a period of unauthorized absence (UA) that terminated after fifty-eight (58) days on 15 July 1970. On 30 July 1970, you commenced a period of UA that terminated after 116 days on 23 November 1970. On 30 November 1970, you commenced a period of UA that terminated after 115 days on 25 March 1971.

On 25 August 1971, pursuant to your guilty pleas you were convicted at a Special Court-Martial (SPCM) of your 58, 116, and 115-day UAs. You were sentenced to a reduction in rank to the lowest enlisted paygrade (E-1), restriction, hard labor, and forfeitures of pay. On 17 September 1971, the Convening Authority approved the SPCM sentence.

On 6 September 1971, you commenced another UA that terminated after 543 days on 2 March 1973. On 21 March 1973, you received non-judicial punishment (NJP) for being absent from your appointed place of duty. You did not appeal your NJP.

On 27 March 1973, you commenced yet another UA. On 30 April 1973, your command declared you to be a deserter and dropped you from the rolls.

On 26 September 1974, Headquarters Marine Corps (HQMC) directed you to report to the ██████████ (██████████) located at ██████████, ██████████. Upon reporting, you were to be given an opportunity to: (a) request a discharge for the good of the service in accordance with existing Department of Defense regulations, (b) to reaffirm your allegiance to your country, and (c) to pledge to perform alternate service for a period not to exceed 24 months. Upon the completion of the foregoing procedures, to include a medical examination, you would be issued an undesirable (OTH) discharge.

Your long-term UA terminated after approximately 556 days when you reported as directed to Fort Benjamin Harrison on or about 4 October 1974.

On 10 October 1974, you submitted a voluntary written request for an undesirable discharge for the good of the service pursuant to the provisions of Presidential Proclamation No. 4313 ("Proclamation"). 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 making this request on your own free will and were not subject to any coercion. You understood that your absence was characterized as a willful and persistent unauthorized absence which rendered you triable under the Uniform Code of Military Justice and could lead to the imposition of a Bad Conduct Discharge (BCD). You acknowledged that if your request was approved, your characterization of service will be undesirable (OTH). You acknowledged that an undesirable/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. You understood that within fifteen (15) days of the date of receipt of the OTH discharge certificate you must report to your State Director of Selective Service to arrange for performance of alternate service. You further understood that satisfactory completion of such alternate service will be acknowledged by issuance of a Clemency Discharge Certificate (CDC). You also expressly acknowledged that such CDC will not alter your ineligibility for any benefits predicated upon his military service and receipt of an OTH characterization of service.

On 10 October 1974, the commanding officer of the ██████████ approved your request for undesirable discharge for the good of the service, and the ██████████ directed an OTH characterization in accordance with the Proclamation. The Joint Alternate Service Board (JASB) determined that you would be required to serve thirteen (13) months of alternate service pursuant to the Proclamation. Ultimately, on 11 October 1974, you were separated from the Marine Corps

with an under conditions Other Than Honorable (OTH) discharge characterization and assigned an RE-4 reentry code.

On 12 September 1975, the Selective Service System (SSS) notified HQMC that you were terminated early from your enrollment in the Reconciliation Service Program (RSP). The SSS informed HQMC that you did not complete your required period of alternate service. The SSS noted that while you commenced work on an approved job, you were subsequently dismissed for unsatisfactory performance, and the SSS determined you should not be reassigned to another alternate service job.

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 your sole contention that you completed a 13-month amnesty program to upgrade your discharge and you never received your discharge upgrade. For purposes of clemency and equity consideration, the Board noted that you did not provide any evidence in support of your application other than your written contentions on your DD Form 149.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. The Board noted, contrary to your contention, that the evidence clearly indicated you failed to complete your required alternate service as required by the JASB, and that you were terminated early from the RSP for unsatisfactory performance and not reassigned to another alternate service job.

Further, 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 simple fact remains is that you left the Marine Corps while you were still contractually obligated to serve and you went into a UA status multiple times without any legal justification or excuse on no less than five (5) separate occasions totaling approximately 1,388 days. The Board determined that the record clearly reflected your misconduct was intentional and willful, and 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.

The Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average calculated from your available performance evaluations during your enlistment was approximately 2.36 in conduct. Marine Corps regulations in place at the time of your discharge recommended a minimum trait average of 4.0 in conduct (proper military behavior), for a fully honorable characterization of service. The Board concluded that your



conduct marks during your active duty career were a direct result of your pattern of serious misconduct which further justified your OTH discharge characterization.

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 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,

10/11/2023

