



**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. 7420-23  
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 20 November 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).

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the U.S. Marine Corps (USMC) and began a period of active service on 27 June 1977. On 26 June 1978 and 23 August 1978, you were counseled concerning the importance of being prompt for formations and notifying your superiors when unable to be present. Throughout your enlistment, you received additional counseling entries for infractions ranging from poor performance to unauthorized absences (UA). On 18 January 1979, you received a civil conviction at the █ District Court for driving under the influence and speeding. You pleaded guilty and were sentenced to six months of confinement, which was suspended, and a fine of \$110.00 plus court costs. You subsequently attended drug and alcohol class. On 11 June 1979, you were found guilty at a summary court-martial (SCM) of a period of unauthorized absence (UA) and were sentenced to restriction for 14 days and forfeitures of \$200.00 pay per month for one month. On 19 June 1980, you received nonjudicial punishment

(NJP) for two specifications of UA from your appointed place of duty. This was followed by a separate period of UA, commencing on 1 September 1980, which lasted eight days. On 26 March 1980, you were recommended for administrative separation.

Unfortunately, the documents related to your administrative separation are not in your official military personnel file (OMPF). In this regard, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary (as is the case at present), will presume that they have properly discharged their official duties. Your Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that you were separated from the Marine Corps on 5 January 1981 with an Other Than Honorable (OTH) characterization of service, your narrative reason for separation is "To escape trial by court-martial," your separation code is "KFS1," and your reenlistment code is "RE-4."

Based on the information contained on your DD Form 214, it appears that you submitted a voluntary written request for an OTH discharge for separation in lieu of trial (SILT) by court-martial. In the absence of evidence to the contrary, it is presumed that prior to submitting this voluntary discharge request, you would have conferred with a qualified military lawyer, been advised of your rights, and warned of the probable adverse consequences of accepting such a discharge. As part of this discharge request, you would have acknowledged that your characterization of service upon discharge would be an OTH.

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 your contentions that: (1) you served at █ for your entire service and now have multiple health issues, (2) you need assistance from the Department of Veterans Affairs (VA) and USMC, (3) your OTH makes you ineligible for benefits, (4) your record indicates many UAs but you spent most time in the field and could not make muster, (5) you find many of your UAs to be in error, and (6) there are many date discrepancies in your record. For purpose of clemency and equity consideration, the Board noted you did not provide 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 civilian conviction, SCM, and NJP, 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. The Board noted that you were given multiple opportunities to correct your conduct issues but you continued to commit misconduct. Further, the Board considered the likely discrediting effect your civilian conviction had on the Marine Corps. Finally, 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 concluded your conduct constituted a significant departure of that expected of a service member and continues to warrant an OTH characterization of service. 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.

In regard to your █ health issues, Public Law 112-154, Honoring America's Veterans and Caring for █ Families Act of 2012, requires the Veterans Administration to provide health care to Veterans with one or more of 15 specified illnesses or conditions. You should contact the nearest office of the Department of Veterans Affairs concerning your right to apply for benefits or appeal an earlier unfavorable determination.

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,

11/29/2023

