



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. 7872-23

Ref: Signature Date



Dear █

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 within the statute of limitations, the Board found it in the interest of justice to review your request. A three-member panel of the Board, sitting in executive session, considered your application on 2 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 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 4 April 1972. You were absent without authorization from 30 September 1972 to 2 October 1972. On 6 October 1972, you received non-judicial punishment (NJP) for violating Uniform Code of Military Justice (UCMJ) Article 91, for disobeying an order. On 13 October 1972, you were found guilty at Summary Court Martial (SCM) of violating UCMJ Article 121, for larceny of a transistor radio, and Article 134, communicating a threat. You were sentenced to 20 days confinement and forfeitures of pay. On 9 November 1972, you received your second NJP for violating UCMJ Article 91, for disobeying an order.

On 5 February 1973, you were found guilty at Special Court-Martial (SPCM) of violating UCMJ Article 121, for two specifications of larceny in the amount of \$300 and \$220 from a fellow shipmate, and Article 109, for four specifications of wrongfully damaging property by cutting or tearing the seabag of fellow service members. You were sentenced to a Bad Conduct Discharge (BCD), forfeitures of pay, and five months confinement. After being released from confinement, you received your third NJP, on 5 July 1973, for violating UCMJ Article 86, for three specifications of unauthorized absence totaling 9 days.

On 18 July 1973, you were placed on appellate leave while your case was under review by the Navy and Marine Corps Court of Criminal Appeals. Ultimately, on 15 July 1974, you were discharged from the Marine Corps with a BCD as adjudged at the SPCM and assigned an "RE- 4" reentry code.

You previously petitioned this Board and were denied relief on 5 December 1995.

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 change your discharge characterization and narrative reason for separation, (2) your assertion that you had a difficult childhood and saw the Marine Corps as a way to change your life, (3) the fact that losing your money to gambling caused you to panic and resulted in your misconduct, and (4) your request for clemency based on your post-service character. For purposes of clemency and equity consideration, the Board noted that you provided advocacy letters and a summary of your 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 NJPs, SCM, and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it involved theft from fellow Marines. Further, the Board also considered the negative impact your conduct had on the good order and discipline of your command. The Board determined that such misconduct is contrary to the Marine Corps values and policy and places an unnecessary burden on fellow service members. The Board felt that you received advice from qualified counsel throughout your court martial and that you were aware of your rights. The Board concluded that your conduct constituted a significant departure from that expected of a Marine and continues to warrant a BCD, as issued by the court. The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade.

While the Board commends your post-service accomplishments, it determined that there was no impropriety or inequity in your discharge, and concluded that your misconduct clearly merited your receipt of a BCD. 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, _____

10/19/2023

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Executive Director

Signed by: █
