



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. 8038-23

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.

Because your application was submitted with new evidence not previously considered, 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 16 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 previously submitted an application to the Naval Discharge Review Board and were denied relief on 13 April 1979. You also petitioned this Board for relief and were denied relief on 29 August 2017.

You enlisted in the United States Marine Corps and commenced a period of active duty on 20 June 1972. From 21 June 1973 to 19 March 1974, you received five non-judicial punishments (NJP) for violations of Uniform Code of Military Justice (UCMJ) Article 86, for unauthorized absence (UA) from your appointed place of duty, Article 91, disobedience, and Article 92, for failure to obey a lawful order. You did not appeal any of these NJPs.

On 1 July 1974, you were found guilty at Special Court Martial (SPCM) of violating UCMJ Article 128, for two specifications of assault with intent to produce bodily harm. You were sentenced to two months confinement and reduction in rank to E-1. Upon release from

confinement, you began an extended period of unauthorized absence UA, totaling 113 days, from 16 September 1974 to 10 January 1975. On 21 February 1975, you were awarded your sixth NJP for violating UCMJ Article 86, for a 3-hour period of UA.

On 14 March 1975, you submitted a "Request for Undesirable Discharge for the Good of the Service" (discharge in lieu of trial by court martial) for charges related to your 113-day period of UA. You acknowledged your rights and the stated that you understood that a discharge under Other Than Honorable (OTH) conditions. The separation authority granted your request and, on 25 March 1975, you were discharged from the Marine Corps for the good of the service with an OTH characterization of service and assigned an RE- 4 reentry 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, your desire for a discharge upgrade and your contentions that: (1) you were "AWOL" for approximately 30 days due to your brother being critically injured and wanting to stay by his side while he was in critical care, and (2) you were informed that your OTH characterization would be automatically upgraded to a General (Under Honorable Conditions) characterization in five years after discharge. For purposes of clemency and equity consideration, the Board noted that you provided advocacy letters in support of your request for relief.

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, SPCM, and 113-day period of UA, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your repeated misconduct and the likely negative impact your conduct had on the good order and discipline of your command. The Board determined that such misconduct is contrary to Marine Corps values and policy. The Board highlighted that, per your own request, you received a discharge for the good of the service in lieu of trial by court martial. After receiving advice from your detailed counsel, you acknowledged your rights. Further, you stated "I understand that an undesirable discharge is a discharge under Other than Honorable conditions and that as a result of such discharge I may be deprived of virtually all rights as a veteran, under both Federal and State legislation, that I may not be eligible for any benefits earned by service under honorable conditions, and that I may expect to encounter substantial prejudice in civilian life...." The Board concluded that the separation authority already granted you significant clemency by accepting your separation in lieu of trial by court martial, thereby allowing you to avoid a possible court martial conviction and/or punitive discharge. In light of your request for discharge in lieu of trial, the Board determined that a characterization under OTH conditions remains appropriate in your case, as the basis of your separation was the commission of numerous acts constituting a significant departure from the conduct expected of a service member.

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. Lastly, the Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. As a result, the Board determined that there was no impropriety or inequity in your discharge and your misconduct clearly merited your receipt of an OTH. 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

