



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

█  
Docket No. 8104-23  
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.

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 13 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 27 March 1973. Your enlistment physical examination, on 9 March 1973, and self-reported medical history both noted no neurologic or psychiatric conditions or symptoms.

On 13 May 1975, you received non-judicial punishment (NJP) for failing to obey a lawful order. You appealed your NJP, but the appeal was denied by higher authority on 13 July 1975.

On 16 May 1975, you were arrested by civilian authorities on a charge of armed robbery. On 9 October 1975, you were convicted in █ Superior Court, █ of felony armed robbery with a dangerous weapon. You were sentenced to confinement for not less than

twenty years nor more than twenty-five years. Each day you were held in civilian custody meant you were also in an unauthorized absence (UA) status day-for-day from the Marine Corps.

On 4 December 1975, you acknowledged in writing the receipt of a notification of administrative separation proceedings by reason of misconduct due to your civilian conviction for armed robbery. You elected in writing not to waive any of your rights in connection with the pending administrative discharge action, and by default elected your right to a hearing before an administrative separation board (Adsep Board).

On 24 February 1976, an Adsep Board convened in your case while you were incarcerated by civilian authorities and serving your sentence. At the Adsep Board, you were represented by civilian counsel. Following the presentation of evidence and witness testimony, the Adsep Board members unanimously determined that you committed the misconduct as charged due to your civilian conviction. Subsequent to the misconduct finding, the Adsep Board members recommended by majority vote that you be separated with an undesirable (under Other Than Honorable conditions) (OTH)) characterization of service.

On 1 March 1976, a Marine Corps Staff Judge Advocate determined your separation was legally and factually sufficient. Ultimately, on 9 March 1976, you were separated from the Marine Corps for misconduct with an OTH discharge characterization and assigned an RE-4 reentry code.

On 27 February 1978, the Naval Discharge Review Board denied your initial discharge upgrade application while you were still incarcerated. On 7 May 2018, this Board denied your petition for relief. On 17 December 2019, this Board again denied your discharge upgrade petition.

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 a Secretarial Authority discharge. You contend that: (a) you were an enlisted black man in the Marine Corps during the 1960s and 1970s when racial inequality was at a high in the military, and it has been well documented how black service members were more harshly punished than other races, (b) you have been living with the weight of the OTH for most of your life, (c) since your separation you have been an exemplary citizen, achieved a great deal of success, and your record of exemplary conduct and success is worthy of clemency, (d) your behavior was so exemplary while incarcerated that your sentence was reduced with parole down to six years, (e) up until your separation you had a meritorious service record, which included meritorious promotions and being a top graduate from MOS school, (f) you also completed your GED while in the service, and (g) your OTH is unjust and disproportionate to the crime committed given the lack of any prior misconduct, the disparity in punishment to black service members, the improper factors considered in punishing you, and the voluminous evidence of upstanding character and citizenship following your discharge. For purposes of clemency and equity consideration, the Board considered the entirety of the evidence you provided in support of your application.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. The Board did not believe that your record was otherwise so meritorious to deserve an 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 noted that, although one's service is generally characterized at the time of discharge based on performance and conduct throughout the entire enlistment, the conduct or performance of duty reflected by only a single incident of misconduct may provide the underlying basis for discharge characterization. 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 Board determined that the record clearly reflected your misconduct was intentional and willful and indicated you were unfit for further service. Moreover, 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 was not persuaded by your contention that you were somehow the victim of disparate treatment as an enlisted black man in the military. The Board noted that you did not proffer any convincing evidence of any such disparate treatment occurring to you during your enlistment to substantiate such a sweeping contention. The Board noted you were convicted by civilian authorities of very serious misconduct, and the Marine Corps separated you on the basis of your civilian felony offense. The Board determined the Marine Corps did not act in an arbitrary or discriminatory manner by separating you for a serious civilian conviction for which you pleaded guilty. The Board also determined any arguments for relief based on the Manker v. Del Toro decision were not persuasive.

As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your serious misconduct and disregard for good order in discipline clearly merited your discharge. 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



Executive Director

Signed by: █