

DEPARTMENT OF THE NAVY

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

> Docket No. 9025-23 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 application on 24 January 2024. 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 Marine Corps and commenced active duty on 11 April 1975. On 8 November 1975, you commenced a period of unauthorized absence that ended in your apprehension by civil authorities on 3 February 1976. You were charged with one count of unauthorized absence, placed in confinement, and the charge was referred to Special Court Marital (SPCM) on 13 February 1976. On 27 February, you were released from confinement. On 8 March 1976, you commenced a period of UA, during which time you were declared a deserter, that ended in your apprehension by civil authorities on 9 June 1976. On 28 June 1976, you commenced a period of UA that ended on 31 August 1976. You were charged with three counts of unauthorized absence and those charges were referred to SPCM on 3 September 1976.

On 21 September 1976, you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for three specifications of UA for eighty-seven, ninety-four, and sixty-four days respectively. Prior to submitting this 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. On 12 October 1976, your request was denied by the separation authority and you were ordered to remain on active duty for appropriate action.

On 12 November 1976, you commenced a period of UA that ended in your surrender to civil authorities on 13 April 1977. You were placed in confinement and charged with four specifications of UA that were referred to SPCM on 29 April 1977.

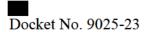
On 4 May 1977, you submitted another written request for an undesirable discharge in order to avoid trial by court-martial for four specifications of UA for eighty-seven, ninety-four, sixty-four, and one-hundred-thirteen days respectively. Prior to submitting this request, you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. On 31 May 1977, your request was denied by the separation authority and you were ordered to remain on active duty for appropriate action.

On 13 June 1977, you were found guilty at SPCM of four specifications of UA and sentenced to reduction in rank to E-1, forfeitures of pay, confinement at hard labor, and a Bad Conduct Discharge (BCD).

On 25 August 1977, you were released from confinement. You were subsequently denied clemency, your sentence was affirmed by a court of military review, and you were discharged on 10 April 1978 with a BCD.

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 change your discharge characterization of service and your contentions that the Department of Veterans Affairs (VA) indicated you received a Dishonorable Discharge (DD) and you were experiencing a family break up. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

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 SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it included multiple extended periods of UA, some of which ended in your apprehension. The Board also considered the likely negative impact your repeated misconduct had on the good order and discipline of your command. Finally, the Board noted that decisions reached by the VA to determine if former servicemembers rate certain VA benefits do not affect previous discharge decisions made by the Marine Corps. The criteria used by the VA in determining whether a former servicemember is eligible for benefits are different than that used by the Marine Corps when determining a



member's discharge characterization. Notwithstanding, the Board found no evidence in your record that you received a DD from the Marine Corps.

As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant a BCD characterization. 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.

