



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.

Sincerely,

2/12/2024

